EXHIBIT B

1 2 3 4 5 6 7 8	JASON C. LO, SBN 219030 jlo@gibsondunn.com MATTHEW BENJAMIN (pro hac vice mbenjamin@gibsondunn.com RAYMOND A. LAMAGNA, SBN 244 rlamagna@gibsondunn.com GIBSON, DUNN & CRUTCHER LLP 333 South Grand Avenue Los Angeles, CA 90071-3197 Telephone: 213.229.7000 Facsimile: 213.229.7520	1800 Ave. of the Stars
9	Attorneys for Plaintiff Netlist Inc.	
10	UNITED STATE	S DISTRICT COURT
11	CENTRAL DISTR	CICT OF CALIFORNIA
12	SOUTHE	RN DIVISION
13		
14	NETLIST INC., a Delaware	CASE NO. 8:20-cv-993-MCS (ADS)
15	corporation,	NETLIST INC.'S STATEMENT OF
16	Plaintiff,	GENUINE DISPUTES OF MATERIAL FACTS IN RESPONSE
17	v.	TO DEFENDANT'S STATEMENT OF ADDITIONAL MATERIAL FACTS
18	SAMSUNG ELECTRONICS CO.,	ADDITIONAL MATERIAL FACTS
19	LTD., a Korean corporation,	
20	Defendant.	
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		NETLIST INC'S STATEMENT OF GENUINE DISPUTES OF MATERIAL FACT CASE NO. 820 CV. 992 MCG (ADS)

Plaintiff Netlist Inc. ("Netlist") hereby submits its Statement of Genuine Disputes of Material Fact in response to Defendant Samsung's Statement of Additional Material Facts. With the exception of Nos. 62, 67, 68, 69, and 71 below, Defendant's additional alleged SUF below are verbatim repeats of Defendant's alleged Statement of Undisputed Facts ("SUF") submitted by Defendant in support of Defendant's own opening Motion for Summary Judgment. Netlist has thus responded here by repeating its response to Samsung's prior assertion of these same alleged facts (see Dkt. 171-1).

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Undisputed Facts and Supporting		
Evidence		
1. In early 2015, Netlist approached		
Samsung to discuss a strategic		
partnership involving joint developme		
of a product based on a new standard		

Defendant's Alleged Additional

This alleged fact is a verbatim repeat of Defendant's alleged SUF in support of levelopment its opening Motion for Summary Judgment, No. 9.

Plaintiff's Response

Dkt. 150-1 (Declaration of Joyce J. Choi in Support of Samsung's Motion for

Netlist's patents.

called NVDIMM-P and licensing of

JDLA. Evidence: Summary Judgment ("Choi Decl.")) ¶

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15, Exh. 14 at RFA No. 18.

Dkt. 171-12, Ex. 84 to 8-30-21 LaMagna Decl. (Chuck Hong

Disputed but immaterial. Samsung

initiated the discussion that led to the

Dep. Tr.) at 61:22-62:16 ("they came to us to discuss patents")

There were also multiple aspects to a 1 2 strategic partnership discussed in early 3 2015, including joint development, financing, license to patents, supply of 4 5 products to Netlist. 6 7 Evidence: 8 Dkt. 144-3 [Netlist MSJ Ex. 3] 9 (NL108668-69) (May 18, 2015 10 Technology Partnership and IP 11 Cooperation Agreement). 12 Dkt. 171-12, Ex. 84 to 8-30-21 13 LaMagna Decl. (Chuck Hong 14 Dep. Tr.) at 43:19-44:17. 15 16 Defendant's cited supporting evidence 17 does not support the fact. Netlist's interrogatory response simply states 18 that "in 2015, it informed Samsung that 19 20 Netlist is the owner and assignee of 21 standard essential patents as shown in, for example, NL107804 and its 22 attachment." 23 24 Evidence: 25 26 • Dkt. 150-3 [Samsung MSJ Ex. 27 14] at p. 13, RFA No. 18. 28

1	2. The NVDIMM-P-related product was	This alleged fact is a verbatim repeat of
2	a "game changer" according to Chuck	Defendant's alleged SUF in support of
3	Hong and, based on presentation	its opening Motion for Summary
4	materials, was designed to take market	Judgment, No. 10.
5	share in a \$15 billion industry.	
6		Undisputed that the NVDIMM-P
7	Choi Decl. ¶ 8, Exh. 7 at 139:7-25; ¶ 17,	related product discussed in the cited
8	Exh. 16 at SEC008159.	testimony was intended to be a "game
9		changer."
10		
11		Disputed as to the characterization that
12		the NVDIMM-P related product "was"
13		a game changer because it never
14		became a product. (i.e., it was expected
15		to become a game changer).
16		
17		Evidence:
18		• Dkt. 157-4 [Samsung MSJ Ex. 7]
19		(Chuck Hong Dep. Tr.) at 139:7-
20		25.
21	3. At that time, Netlist also raised a	This alleged fact is a verbatim repeat of
22	licensing component and the potential	Defendant's alleged SUF in support of
23	that Samsung would be subject to an	its opening Motion for Summary
24	injunction for infringement of Netlist's	Judgment, No. 11.
25	patents.	
26		Disputed.
27		
28		
		NETLIST INC'S STATEMENT OF GENLINE DISPLITES OF

Choi Decl. ¶ 18, Exh. 17 at NL107807; First, Samsung is the one that raised a 1 2 ¶ 8, Exh. 7 at 42:4-14. licensing component. 3 Evidence: 4 5 Dkt. 171-12, Ex. 84 to 8-30-21 LaMagna Decl. (Chuck Hong 6 7 Dep. Tr.) at 61:22-62:16 ("they came to us to discuss patents"). 8 9 Second, Netlist never threatened 10 11 Samsung with an infringement claim or 12 an injunction. 13 14 Evidence: 15 Dkt. 171-12, Ex. 84 to 8-30-21 LaMagna Decl. (Chuck Hong 16 Dep. Tr.) at 45:20-24 ("Q: "[D]o 17 you recall ever mentioning the 18 potential that Samsung might be 19 20 infringing [Netlist's] patent? A: 21 No, no.") 22 23 Defendant's cited supporting evidence 24 does not support the alleged fact. The cited testimony of Chuck Hong does 25 not reference any claim of infringement 26 27 by Samsung of Netlist's patents (the 28

1		discussion of litigation and
2		infringement concerns allegations
3		directed to Hynix).
4		
5		Evidence:
6		• Dkt. 151-1 [Samsung MSJ Ex.
7		17 (NL107804-809) at
8		NL107807.
9		• Dkt. 157-4 [Samsung MSJ Ex. 7]
10		(Chuck Hong Dep. Tr.) at 42:4-
11		14 (testifying that the April 2015
12		proposal was for "the patent
13		license" and for "other
14		components of an overall
15		strategic relationship with
16		Samsung.").
17	4. Netlist's first proposal to Samsung in	This alleged fact is a verbatim repeat of
18	April 2015 focused on the cash	Defendant's alleged SUF in support of
19	consideration, and did not mention a	its opening Motion for Summary
20	long term supply agreement. ("Q Now,	Judgment, No. 22.
21	at least on this proposal, Netlist didn't	
22	list supply as a component of the deal;	Undisputed that the document does not
23	correct? A Yes, it's not here.")	mention a long-term supply agreement,
24		but also immaterial.
25	Choi Decl. ¶ 18, Exh. 17 at NL107807;	
26	¶ 8, Exh. 7 at 51:3-52:18.	Disputed that Netlist's proposal to
27		Samsung in April 2015 focused on any
28		NETHOT DIOLOGITATIVE OF CIVILING DISCUSSION

1 one item. 2 3 Also disputed as to the materiality of the April 2015 proposal given that the 4 5 JDLA contains an integration clause 6 ("Except as otherwise stated herein, this 7 Agreement and all Appendices attached hereto supersede all prior proposals, 8 9 consents, agreements, and discussions, 10 oral or written, between the Parties 11 relating to the subject matter of this 12 Agreement."). 13 14 Evidence: 15 Dkt. 151-1 [Samsung MSJ Ex. 16 17] (NL107804) at NL107807. 17 Dkt. 148-1 [Samsung MSJ Ex. 19] (SEC0000001) at 18 19 SEC000014. 20 5. When Netlist sent Samsung the first This alleged fact is a verbatim repeat of 21 draft of the term sheet on April 21, Defendant's alleged SUF in support of 22 2015, Netlist proposed, as part of the its opening Motion for Summary 23 "Joint development and marketing" for Judgment, No. 23. 24 the "Technology Collaboration," that 25 Samsung supply NAND and DRAM Undisputed that the document contains a section header titled "Technology 26 product. 27 Collaboration," which contains 28

1	Choi Decl. ¶ 23, Exh. 22; ¶ 24, Exh. 23	reference to "joint development and
2	at § II.	marketing," but immaterial.
3		
4		Disputed as to the materiality of the
5		April 2015 proposal given that the
6		JDLA contains an integration clause
7		("Except as otherwise stated herein, this
8		Agreement and all Appendices attached
9		hereto supersede all prior proposals,
10		consents, agreements, and discussions,
11		oral or written, between the Parties
12		relating to the subject matter of this
13		Agreement.").
14		
15		Evidence:
16		• Dkt. 148-1 [Samsung MSJ Ex.
17		19] (SEC0000001) at
18		SEC000014.
19		
20		Disputed that as to the characterization
21		that supply of NAND and DRAM
22		products are "as part of" the joint
23		development and marketing. The cited
24		document merely lists examples of
25		possible options ("Joint development
26		and marketing $(TBD) - i.e.$, Samsung
27		supplies Netlist HV ASIC controller,
28		A STATE AND DIGINATE AND

1		Flash and DRAM; Samsung includes
2		HV in its product roadmap.").
3		
4		Evidence:
5		• Dkt. 151-1 [Samsung MSJ Ex.
6		23] (NL100004) at § II.
7	6. In Netlist's June 9, 2015 revision to	This alleged fact is a verbatim repeat of
8	the term sheet, under the heading	Defendant's alleged SUF in support of
9	"Technology Collaboration," Netlist	its opening Motion for Summary
10	proposed: "Raw Materials: Samsung	Judgment, No. 23.
11	will supply NAND, DRAM on mutually	
12	agreed terms."	Undisputed but immaterial.
13		
14	Choi Decl. ¶ 25, Exh. 24, § II.5.	The JDLA contains an integration
15		clause ("Except as otherwise stated
16		herein, this Agreement and all
17		Appendices attached hereto supersede
18		all prior proposals, consents,
19		agreements, and discussions, oral or
20		written, between the Parties relating to
21		the subject matter of this Agreement."),
22		so what the earlier term sheets stated is
23		not material.
24		
25		Evidence:
26		

1 Dkt. 148-1 [Samsung MSJ Ex. 2 19] (SEC0000001) at 3 SEC000014. 7. Netlist CEO Chuck Hong testified This alleged fact is a repeat of 4 5 that "Technology Collaboration" in Defendant's alleged SUF in support of its opening Motion for Summary 6 Netlist's revised term sheet referred to 7 the parties' joint efforts to standardize Judgment, Nos. 25 and 26 combined. 8 NVDIMM-P, and that "Raw Materials" referred to various DRAM and NAND Disputed to the extent that Defendant's 10 statement implies that Chuck Hong flash components necessary to support 11 the NVDIMM-P commercialization. testified that the proposed "technology 12 collaboration" was limited exclusively 13 to "efforts to standardize NVDIMM-P" Choi Decl. ¶ 8, Exh. 7 at 91:4-17; 92:4-14 12. See also 101:25-102:7 ("Q. And so as opposed to the inclusion of such 15 those were raw materials that were efforts. 16 provided in connection with 17 commercialization of the dash P While Chuck Hong testified that product; correct? A. That's correct.") 18 NVDIMM-P standardization certainly 19 fell under the parties' proposed 20 collaboration, he did not testify that this 21 would be the only thing that would be 22 covered by the Technology 23 Collaboration. 24 25 To the contrary, Mr. Hong testified 26 that, "from day one" Netlist had not 27 ever "communicate[d] to Samsung that

1	Samsung's obligation to supply NAND
2	and DRAM products would be limited
3	to NVDIMM-P."
4	
5	Evidence:
6	• Dkt. 171-12, Ex. 84 to 8-30-21
7	LaMagna Decl. (Chuck Hong
8	Dep. Tr.) at 238:15-24.
9	
10	In fact, Mr. Hong repeatedly testified
11	that the proposed supply term was not
12	worded to be limited to NVDIMM-P.
13	
14	Evidence:
15	• Dkt. 171-12, Ex. 84 to 8-30-21
16	LaMagna Decl. (Chuck Hong
17	Dep. Tr.) at 225:17-19, 227:4-23,
18	228:16-229:7, 229:16-230:11,
19	231:11-21, 232:5-233:2, 234:20-
20	25 (testifying that prior iterations
21	of the supply provision in earlier
22	drafts from the negotiation
23	history are not worded to be
24	limited to NVDIMM-P).
25	• Dkt. 171-12, Ex. 84 to 8-30-21
26	LaMagna Decl. (Chuck Hong
27	Dep. Tr.) at 222:19-22 (testifying
20	

1	that "the supply commitment was
2	never about NVDIMM-P");
3	220:3-221:3 (testifying that it
4	was never his understanding that
5	the supply provision was to be
6	limited to NVDIMM-P)
7	• See also Dkt. 171-12, Ex. 84 to
8	8-30-21 LaMagna Decl. (Chuck
9	Hong Dep. Tr.) at 222:6-11
10	(testifying that "it's not even
11	within the realm of possibility"
12	to limit the supply provision to
13	NVDIMM-P; "[i]t wouldn't
14	make logical sense"); 233:10-22
15	(testifying that the supply
16	provision was for "all products,"
17	and that "it would make no
18	sense" for it to have meant a
19	supply provision confined to raw
20	material for NVDIMM-P"; this
21	"was clearly understood, and I
22	believe that is reflected in the
23	JDLA")
24	
25	In addition, the alleged fact is
26	immaterial because as Mr. Hong
27	testified, after the MOU was signed, the
28	

parties engaged in further negotiations 1 2 resulting in differences between the 3 MOU and the JDLA. 4 5 Evidence: Dkt. 171-12, Ex. 84 to 8-30-21 6 7 LaMagna Decl. (Chuck Hong 8 Dep. Tr.) at 133:1-7. 9 10 Moreover, the alleged fact is immaterial 11 because the JDLA contains an 12 integration clause ("Except as 13 otherwise stated herein, this Agreement 14 and all Appendices attached hereto 15 supersede all prior proposals, consents, agreements, and discussions, oral or 16 17 written, between the Parties relating to the subject matter of this Agreement."). 18 19 20 Evidence: 21 Dkt. 148-1 [Samsung MSJ Ex. 22 19] (SEC0000001) at SEC000014. 23 24 25 Disputed to the extent that Defendant is 26 characterizing Chuck Hong's testimony 27 about "raw materials" as being limited 28

exclusively to "components necessary 1 2 for the parties' joint efforts to 3 standardize NVDIMM-P" as opposed to the materials being inclusive of such 4 5 components. Mr. Hong expressly testified that raw materials included 6 7 "DRAM, various DRAMs, and various NAND Flash components" without 8 9 limitation. He also testified that, "from 10 day one" Netlist had not ever 11 "communicate[d] to Samsung that 12 Samsung's obligation to supply NAND 13 and DRAM products would be limited 14 to NVDIMM-P." 15 16 Evidence: 17 Dkt. 171-12, Ex. 84 to 8-30-21 LaMagna Decl. (Chuck Hong 18 19 Dep. Tr.) at 92:4-8. 20 Dkt. 171-12, Ex. 84 to 8-30-21 21 LaMagna Decl. (Chuck Hong 22 Dep. Tr.) at 238:15-24. 23 24 In fact, Mr. Hong repeatedly testified 25 that the proposed supply term was not 26 worded to be limited to NVDIMM-P. 27 28

1	Evidence:
2	• Dkt. 171-12, Ex. 84 to 8-30-21
3	LaMagna Decl. (Chuck Hong
4	Dep. Tr.) at 225:17-19, 227:4-23,
5	228:16-229:7, 229:16-230:11,
6	231:11-21, 232:5-233:2, 234:20-
7	25 (testifying that prior iterations
8	of the supply provision in earlier
9	drafts from the negotiation
10	history do not contain a reference
11	to NVDIMM-P).
12	• Dkt. 171-12, Ex. 84 to 8-30-21
13	LaMagna Decl. (Chuck Hong
14	Dep. Tr.) at 222:19-22 (testifying
15	that "the supply commitment was
16	never about NVDIMM-P");
17	220:3-221:3 (testifying that it
18	was never his understanding that
19	the supply provision was to be
20	limited to NVDIMM-P)
21	• See also Dkt. 171-12, Ex. 84 to
22	8-30-21 LaMagna Decl. (Chuck
23	Hong Dep. Tr.) at 222:6-11
24	(testifying that "it's not even
25	within the realm of possibility"
26	to limit the supply provision to
27	NVDIMM-P; "[i]t wouldn't
28	

make logical sense"); 233:10-22 1 (testifying that the supply 2 3 provision was for "all products," and that "it would make no 4 5 sense" for it to have meant a supply provision confined to raw 6 material for NVDIMM-P"; this 7 "was clearly understood, and I 8 9 believe that is reflected in the 10 JDLA") 11 In addition, it is immaterial because as 12 13 Mr. Hong testified, after the MOU was 14 signed, the parties engaged in further 15 negotiations resulting differences between the MOU and the JDLA. 16 17 18 Evidence: 19 Dkt. 171-12, Ex. 84 to 8-30-21 20 LaMagna Decl. (Chuck Hong 21 Dep. Tr.) at 133:1-7. 22 Moreover, it's immaterial 23 because the JDLA contains an 24 integration clause ("Except as 25 otherwise stated herein, this 26 Agreement and all Appendices 27 attached hereto supersede all 28

1 prior proposals, consents, 2 agreements, and discussions, oral 3 or written, between the Parties relating to the subject matter of 4 5 this Agreement."). 6 Dkt. 148-1 [Samsung MSJ Ex. 7 19] (SEC0000001) at 8 SEC000014. 9 8. In Netlist's June 25, 2015 updated This alleged fact is a verbatim repeat of 10 Defendant's alleged SUF in support of term sheet, under the heading "Phase 2: 11 its opening Motion for Summary Technology Productization," Netlist 12 proposed: "1. Parties will work together Judgment, No. 27. 13 to bring an NVDIMM-P product to 14 market. Details of the technical Undisputed that the quoted language 15 collaboration to be negotiated at a later appears in that order in the term sheet. 16 date" and "Raw Materials: Samsung 17 will supply NAND and DRAM on Disputed to the extent that Defendant is mutually agreed terms." implying that the supply language is 18 19 limited exclusively to the Phase II stage 20 Choi Decl. ¶ 26, Exh. 25 at NL005090, simply because of its the order in which 21 NL005092. the terms are placed under the headers. 22 23 Mr. Hong testified that, "from day one" 24 Netlist had not ever "communicate[d] 25 to Samsung that Samsung's obligation 26 to supply NAND and DRAM products 27 would be limited to NVDIMM-P."

1 2 Evidence: 3 Dkt. 171-12, Ex. 84 to 8-30-21 LaMagna Decl. (Chuck Hong 4 5 Dep. Tr.) at 238:15-24. 6 7 In fact, Mr. Hong repeatedly testified 8 that the proposed supply term was not 9 worded to be limited to NVDIMM-P. 10 11 Evidence: 12 Dkt. 171-12, Ex. 84 to 8-30-21 13 LaMagna Decl. (Chuck Hong 14 Dep. Tr.) at 225:17-19, 227:4-23, 228:16-229:7, 229:16-230:11, 15 231:11-21, 232:5-233:2, 234:20-16 25 (testifying that prior iterations 17 of the supply provision in earlier 18 drafts from the negotiation 19 20 history do not contain a reference 21 to NVDIMM-P). 22 Dkt. 171-12, Ex. 84 to 8-30-21 23 LaMagna Decl. (Chuck Hong 24 Dep. Tr.) at 222:19-22 (testifying 25 that "the supply commitment was never about NVDIMM-P"); 26 27 220:3-221:3 (testifying that it 28

was never his understanding that 1 the supply provision was to be 2 3 limited to NVDIMM-P) See also Dkt. 171-12, Ex. 84 to 4 5 8-30-21 LaMagna Decl. (Chuck Hong Dep. Tr.) at 222:6-11 6 7 (testifying that "it's not even within the realm of possibility" 8 to limit the supply provision to 9 NVDIMM-P; "[i]t wouldn't 10 11 make logical sense"); 233:10-22 12 (testifying that the supply 13 provision was for "all products," and that "it would make no 14 sense" for it to have meant a 15 supply provision confined to raw 16 material for NVDIMM-P"; this 17 "was clearly understood, and I 18 19 believe that is reflected in the JDLA") 20 21 22 In addition, it is immaterial because as 23 Mr. Hong testified, after the MOU was 24 signed, the parties engaged in further 25 negotiations resulting differences 26 between the MOU and the JDLA. 27 28

1 Evidence: 2 Dkt. 171-12, Ex. 84 to 8-30-21 3 LaMagna Decl. (Chuck Hong Dep. Tr.) at 133:1-7. 4 5 6 Moreover, it is immaterial because the 7 JDLA contains an integration clause ("Except as otherwise stated herein, this 8 9 Agreement and all Appendices attached 10 hereto supersede all prior proposals, 11 consents, agreements, and discussions, 12 oral or written, between the Parties 13 relating to the subject matter of this 14 Agreement."). 15 16 Evidence: 17 Dkt. 148-1 [Samsung MSJ Ex. 19] (SEC0000001) at 18 19 SEC000014. 20 9. In the drafts leading up to the final This alleged fact is a verbatim repeat of 21 and executed MOU, Netlist understood Defendant's alleged SUF in support of 22 that Samsung's supply obligations its opening Motion for Summary 23 would only arise in the event of Judgment, No. 29. 24 commercialization of the NVDIMM-P 25 product subject to the parties' joint Disputed. development but this never occurred. 26 27 In the cited testimony, Chuck Hong 28

1		testified that the proposed supply
2	Choi Decl. ¶ 8, Exh. 7 at 104:6-24.	provision "applies to the dash-P
3		product to the extent it ever got
4		commercialized."
5		
6		Dkt. 171-12, Ex. 84 to 8-30-21
7		LaMagna Decl. (Chuck Hong Dep. Tr.)
8		at 104:21-24.
9		
10		But Mr. Hong does not ever testify that
11		that term applied to NVDIMM-P to the
12		exclusion of components for all other
13		products.
14		
15		To the contrary, Mr. Hong testified
16		that, "from day one" Netlist had not
17		ever "communicate[d] to Samsung that
18		Samsung's obligation to supply NAND
19		and DRAM products would be limited
20		to NVDIMM-P."
21		
22		Evidence:
23		• Dkt. 171-12, Ex. 84 to 8-30-21
24		LaMagna Decl. (Chuck Hong
25		Dep. Tr.) at 238:15-24.
26		
27		

1	In fact, Mr. Hong repeatedly testified
2	that the proposed supply term was not
3	worded to be limited to NVDIMM-P.
4	
5	Evidence:
6	• Dkt. 171-12, Ex. 84 to 8-30-21
7	LaMagna Decl. (Chuck Hong
8	Dep. Tr.) at 225:17-19, 227:4-23,
9	228:16-229:7, 229:16-230:11,
10	231:11-21, 232:5-233:2, 234:20-
11	25 (testifying that prior iterations
12	of the supply provision in earlier
13	drafts from the negotiation
14	history do not contain a reference
15	to NVDIMM-P).
16	• Dkt. 171-12, Ex. 84 to 8-30-21
17	LaMagna Decl. (Chuck Hong
18	Dep. Tr.) at 222:19-22 (testifying
19	that "the supply commitment was
20	never about NVDIMM-P");
21	220:3-221:3 (testifying that it
22	was never his understanding that
23	the supply provision was to be
24	limited to NVDIMM-P)
25	• See also Dkt. 171-12, Ex. 84 to
26	8-30-21 LaMagna Decl. (Chuck
27	Hong Dep. Tr.) at 222:6-11
28	

(testifying that "it's not even 1 within the realm of possibility" 2 3 to limit the supply provision to NVDIMM-P; "[i]t wouldn't 4 5 make logical sense"); 233:10-22 (testifying that the supply 6 provision was for "all products," 7 and that "it would make no 8 sense" for it to have meant a 9 10 supply provision confined to raw material for NVDIMM-P"; this 11 "was clearly understood, and I 12 13 believe that is reflected in the 14 JDLA") 15 16 In addition, it's immaterial because as Mr. Hong testified, after the MOU was 17 18 signed, the parties engaged in further 19 negotiations resulting differences 20 between the MOU and the JDLA. 21 22 Evidence: 23 Dkt. 171-12, Ex. 84 to 8-30-21 24 LaMagna Decl. (Chuck Hong 25 Dep. Tr.) at 133:1-7. 26 27

1		Moreover, it's immaterial because the
2		JDLA contains an integration clause
3		("Except as otherwise stated herein, this
4		Agreement and all Appendices attached
5		hereto supersede all prior proposals,
6		consents, agreements, and discussions,
7		oral or written, between the Parties
8		relating to the subject matter of this
9		Agreement.").
10		
11		Evidence:
12		• Dkt. 148-1 [Samsung MSJ Ex.
13		19] (SEC0000001) at
14		SEC000014.
15	10. Netlist CEO Chuck Hong testified	This alleged fact is a verbatim repeat of
16	that Netlist's intent underlying the MOU	Defendant's alleged SUF in support of
17	was to get Samsung's commitment to	its opening Motion for Summary
18	supply NAND and DRAM products for	Judgment, No. 30.
19	the NVDIMM-P product so that Netlist	
20	would have sufficient supply if and	Disputed.
21	when it was able to commercialize the	
22	technology.	Defendant's cited supporting evidence
23		does not state the characterization
24	Choi Decl. ¶ 8, Exh. 7 at 109:9-110:1.	ascribed to it by Defendant. For
25	- - - - - - - - - -	example, nowhere in Chuck Hong's
26		deposition testimony cited by
27		Defendant does Mr. Hong testify as to
28		

Netlist's intent underlying the MOU. 1 2 3 Furthermore, to the contrary, Mr. Hong testified that, "from day one" Netlist 4 5 had not ever "communicate[d] to Samsung that Samsung's obligation to 6 7 supply NAND and DRAM products would be limited to NVDIMM-P." 8 9 10 Evidence: 11 • Dkt. 171-12, Ex. 84 to 8-30-21 12 LaMagna Decl. (Chuck Hong 13 Dep. Tr.) at 238:15-24. 14 15 In fact, Mr. Hong repeatedly testified 16 that the proposed supply term was not 17 worded to be limited to NVDIMM-P. 18 19 Evidence: 20 Dkt. 171-12, Ex. 84 to 8-30-21 21 LaMagna Decl. (Chuck Hong 22 Dep. Tr.) at 222:19-22 (testifying 23 that "the supply commitment was never about NVDIMM-P"); 24 220:3-221:3 (testifying that it 25 was never his understanding that 26 27

the supply provision was to be 1 2 limited to NVDIMM-P) 3 See also Dkt. 171-12, Ex. 84 to 8-30-21 LaMagna Decl. (Chuck 4 5 Hong Dep. Tr.) at 222:6-11 (testifying that "it's not even 6 within the realm of possibility" 7 to limit the supply provision to 8 9 NVDIMM-P; "[i]t wouldn't make logical sense"); 233:10-22 10 11 (testifying that the supply 12 provision was for "all products," 13 and that "it would make no sense" for it to have meant a 14 15 supply provision confined to raw 16 material for NVDIMM-P"; this "was clearly understood, and I 17 18 believe that is reflected in the 19 JDLA") 20 21 Mr. Hong testified that raw materials for standardization of NVDIMM-P 22 23 would fall within the supply provision, 24 not that that was the only thing that 25 would be covered by the supply 26 provision. 27 28

1		In addition, it's immaterial because as
2		Mr. Hong testified, after the MOU was
3		signed, the parties engaged in further
4		negotiations resulting differences
5		between the MOU and the JDLA.
6		
7		Evidence:
8		• Dkt. 171-12, Ex. 84 to 8-30-21
9		LaMagna Decl. (Chuck Hong
10		Dep. Tr.) at 133:1-7.
11		
12		Moreover, it's immaterial because the
13		JDLA contains an integration clause
14		("Except as otherwise stated herein, this
15		Agreement and all Appendices attached
16		hereto supersede all prior proposals,
17		consents, agreements, and discussions,
18		oral or written, between the Parties
19		relating to the subject matter of this
20		Agreement.").
21		
22		Evidence:
23		• Dkt. 148-1 [Samsung MSJ Ex.
24		19] (SEC0000001) at
25		SEC000014.
26	11. According to Chuck Hong,	This alleged fact is a verbatim repeat of
27	NVDIMM-P was "industry changing"	Defendant's alleged SUF in support of
28		

- 27 -

technology and Netlist's attempt to 1 its opening Motion for Summary 2 Judgment, No. 31. standardize a NVDIMM-P product was 3 a significant business opportunity and one that Netlist had invested more than Disputed. 4 5 \$10 million in engineering costs into. 6 Defendant's cited supporting evidence 7 does not state the characterization Choi Decl. ¶ 8, Exh. 7 at 79:13-80:23, 8 ascribed to it by Defendant. The 139:7-141:6. 9 document speaks for itself. 10 11 Chuck Hong did not testify that 12 NVDIMM-P was industry changing 13 technology, but that hybriDIMM was a game changing technology and "was 14 15 supposed to sync up with the dash P." See Plaintiff's response and evidence to 16 17 Samsung's additional SUF No. 2, supra, incorporated herein. 18 19 20 Evidence: 21 Dkt. 157-4 [Samsung MSJ Ex. 7] 22 (Chuck Hong Dep. Tr.) at 23 139:10-21, 140:1-19. 24 25 In addition, the quoted material says the HybriDIMM product was "significant," 26 27 not the attempt to standardize was a

1		"significant business opportunity."
2		
3		Evidence:
4		• Dkt. 157-4 [Samsung MSJ Ex. 7]
5		(Chuck Hong Dep. Tr.) at
6		139:12, 80:16.
7		
8		Undisputed that Netlist spent \$10
9		million on engineering costs related to
10		the parties' joint development.
11		
12		Evidence:
13		• Dkt. 171-12, Ex. 84 to 8-30-21
14		LaMagna Decl. (Chuck Hong
15		Dep. Tr.) at 212:10-14.
16		
17		Disputed as to the remainder of the
18		characterization. Nowhere in the
19		quoted evidence does it reference
20		"industry changing." See also
21		Plaintiff's response and evidence to
22		Samsung's additional SUF No. 2,
23		supra, incorporated herein.
24	12. The MOU reflected both parties'	This alleged fact is a verbatim repeat of
25	intent on the important points of the	Defendant's alleged SUF in support of
26	parties' agreement.	its opening Motion for Summary
27		Judgment, No. 32.
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Section 6 of the MOU states in full (emphasis added): Undisputed that Section 6 of the MOU 6. Most Favored Nation (MFN): Netlist contains the quoted language. will provide Samsung any NVDIMM-P* controller at a price lower than the Disputed as to the remaining price Netlist provides to any other characterization. buyer. Either party may produce NVDIMM-P controller using its own To the contrary, Mr. Hong testified technology and has no obligation to buy that, "from day one" Netlist had not from the other party. Raw Materials: ever "communicate[d] to Samsung that Samsung will provide competitive Samsung's obligation to supply NAND and DRAM products would be limited pricing (i.e. among customers to NVDIMM-P." purchasing the same products and similar volumes) for the supply of Evidence: Samsung NAND and DRAM products. As to the MOU, Chuck Hong again Dkt. 171-12, Ex. 84 to 8-30-21 testified in deposition that section 6.2 LaMagna Decl. (Chuck Hong limited Samsung's supply obligation to Dep. Tr.) at 238:15-24. the NVDIMM-P development and that this obligation would arise only if and to In fact, Mr. Hong repeatedly testified the extent that the NVDIMM-P product that the proposed supply term was not was ever commercialized. worded to be limited to NVDIMM-P. Evidence: Choi Decl. ¶ 8, Exh. 7 at 31:9-12, 80:13-23, 92:4-12, 109:9-110:1, 116:3-Dkt. 171-12, Ex. 84 to 8-30-21 9; ¶ 22, Exh. 21 at NL069668-69. LaMagna Decl. (Chuck Hong Dep. Tr.) at 225:17-19, 227:4-23,

1	228:16-229:7, 229:16-230:11,
2	231:11-21, 232:5-233:2, 234:20-
3	25 (testifying that prior iterations
4	of the supply provision in earlier
5	drafts from the negotiation
6	history do not contain a reference
7	to NVDIMM-P).
8	• <i>Id.</i> at 222:19-22 (testifying that
9	"the supply commitment was
10	never about NVDIMM-P");
11	220:3-221:3 (testifying that it
12	was never his understanding that
13	the supply provision was to be
14	limited to NVDIMM-P)
15	• See also id. at 222:6-11
16	(testifying that "it's not even
17	within the realm of possibility"
18	to limit the supply provision to
19	NVDIMM-P; "[i]t wouldn't
20	make logical sense"); 233:10-22
21	(testifying that the supply
22	provision was for "all products,"
23	and that "it would make no
24	sense" for it to have meant a
25	supply provision confined to raw
26	material for NVDIMM-P"; this
27	"was clearly understood, and I
28	

believe that is reflected in the 1 2 JDLA") 3 4 In addition, it's immaterial because as 5 Mr. Hong testified, after the MOU was signed, the parties engaged in further 6 7 negotiations resulting differences 8 between the MOU and the JDLA. 9 10 Evidence: 11 • Dkt. 171-12, Ex. 84 to 8-30-21 12 LaMagna Decl. (Chuck Hong 13 Dep. Tr.) at 133:1-7. 14 15 Moreover, it's immaterial because the JDLA contains an integration clause 16 ("Except as otherwise stated herein, this 17 Agreement and all Appendices attached 18 hereto supersede all prior proposals, 19 20 consents, agreements, and discussions, 21 oral or written, between the Parties 22 relating to the subject matter of this 23 Agreement."). 24 25 **Evidence:** 26 Dkt. 148-1 [Samsung MSJ Ex. 27 19] (SEC0000001) at 28

1		SEC000014.
2	13. On October 8, 2015, when the	This alleged fact is a verbatim repeat of
3	parties began drafting the JDLA from	Defendant's alleged SUF in support of
4	the MOU, Samsung proposed the	its opening Motion for Summary
5	following language to Netlist:	Judgment, No. 33.
5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	"6.2 Supply by Samsung. Samsung will supply NAND and DRAM to Netlist on Netlist's request at a competitive price similar to the customers purchasing similar volumes of similar products. For the avoidance of doubt, any of the provisions under this Agreement will not be deemed to require Netlist to purchase any products from Samsung or to require Samsung to supply any products to Netlist." Choi Decl. ¶ 27, Exh. 26 at NL049006; ¶ 28, Exh. 27 at NL049012, § 6.2.	Undisputed that in the October 8, 2015 draft of the JDLA, the language proposed by Samsung for Section 6.2 was as quoted. Disputed that Samsung drafted this from the MOU. Defendant's cited supporting evidence does not support the fact. In addition, it's immaterial because as Mr. Hong testified, after the MOU was signed, the parties engaged in further negotiations resulting differences between the MOU and the JDLA. Evidence: • Dkt. 171-12, Ex. 84 to 8-30-21 LaMagna Decl. (Chuck Hong Dep. Tr.) at 133:1-7.
28		

1		Moreover, it's immaterial because the
2		JDLA contains an integration clause
3		("Except as otherwise stated herein, this
4		Agreement and all Appendices attached
5		hereto supersede all prior proposals,
6		consents, agreements, and discussions,
7		oral or written, between the Parties
8		relating to the subject matter of this
9		Agreement.").
10		
11		Evidence:
12		• Dkt. 148-1 [Samsung MSJ Ex.
13		19] (SEC0000001) at
14		SEC000014.
II.		
15	14. Whitley was Netlist's main	This alleged fact is a verbatim repeat of
15 16	14. Whitley was Netlist's main contributor to the JDLA.	This alleged fact is a verbatim repeat of Defendant's alleged SUF in support of
16	contributor to the JDLA.	Defendant's alleged SUF in support of
16 17		Defendant's alleged SUF in support of its opening Motion for Summary
16 17 18	contributor to the JDLA.	Defendant's alleged SUF in support of its opening Motion for Summary
16 17 18 19	contributor to the JDLA.	Defendant's alleged SUF in support of its opening Motion for Summary Judgment, No. 34.
16 17 18 19 20	contributor to the JDLA.	Defendant's alleged SUF in support of its opening Motion for Summary Judgment, No. 34. Disputed. Chuck Hong testified that he
16 17 18 19 20 21	contributor to the JDLA.	Defendant's alleged SUF in support of its opening Motion for Summary Judgment, No. 34. Disputed. Chuck Hong testified that he did not know whether Mr. Whitley was
16 17 18 19 20 21 22	contributor to the JDLA.	Defendant's alleged SUF in support of its opening Motion for Summary Judgment, No. 34. Disputed. Chuck Hong testified that he did not know whether Mr. Whitley was "overseeing" the negotiation of the
16 17 18 19 20 21 22 23	contributor to the JDLA.	Defendant's alleged SUF in support of its opening Motion for Summary Judgment, No. 34. Disputed. Chuck Hong testified that he did not know whether Mr. Whitley was "overseeing" the negotiation of the JDLA. He was working with outside
16 17 18 19 20 21 22 23 24	contributor to the JDLA.	Defendant's alleged SUF in support of its opening Motion for Summary Judgment, No. 34. Disputed. Chuck Hong testified that he did not know whether Mr. Whitley was "overseeing" the negotiation of the JDLA. He was working with outside
16 17 18 19 20 21 22 23 24 25	contributor to the JDLA.	Defendant's alleged SUF in support of its opening Motion for Summary Judgment, No. 34. Disputed. Chuck Hong testified that he did not know whether Mr. Whitley was "overseeing" the negotiation of the JDLA. He was working with outside counsel on the project.

1		"the" only main contributor.
2		
3		Evidence:
4		• Dkt. 157-4 [Samsung MSJ Ex. 7]
5		(Chuck Hong Dep. Tr.) at
6		130:13-24.
7	15. On October 14, 2015, as to the new	This alleged fact is a verbatim repeat of
8	Section 6.2 of its proposed JDLA,	Defendant's alleged SUF in support of
9	Whitley wrote in bold "Conflicts with	its opening Motion for Summary
10	MOU" and "Samsung states that	Judgment, No. 35.
11	nothing in this agreement will 'require	
12	Samsung to supply any products to	Undisputed that the quoted language
13	Netlist.' Netlist removed this	appears in the document. Disputed as
14	qualification and returned the language	to the characterization.
15	to reflect what was agreed to in the	
16	MOU." Samsung agreed to this change.	The draft agreement was not Netlist's
17		proposed JDLA. Netlist was
18	Choi Decl. ¶ 29, Exh. 28 at NL045877;	responding to Samsung's proposed
19	¶ 30, Exh. 29 at NL049026; ¶ 31, Exh.	language. Here, Netlist via Mr.
20	30 at NL049033; ¶ 32, Exh. 31 at	Whitley is removing Samsung's
21	NL118147 and NL118149.	prohibition that it would not be required
22		"to supply any products to Netlist."
23		
24		Disputed to the extent Samsung is
25		implying that Netlist believe that the
26		supply provision should be limited to
27		NVDIMM-P (as this SUF is cited in
28		NEW ACT DIOLOGICAL TENTRAL OF CONTRAL TO A C

Samsung's brief). Nowhere does any 1 2 of the cited material indicate that 3 Netlist or Mr. Whitley were proposing to limit the supply provision to 4 5 NVDIMM-P. 6 7 Also disputed as to the materiality of the statement, because the JDLA 8 9 contains an integration clause ("Except 10 as otherwise stated herein, this 11 Agreement and all Appendices attached 12 hereto supersede all prior proposals, 13 consents, agreements, and discussions, 14 oral or written, between the Parties 15 relating to the subject matter of this Agreement."). 16 17 18 Evidence: 19 • Dkt. 148-1 [Samsung MSJ Ex. 19] (SEC0000001) at 20 21 SEC000014. 16. As expressed by Whitley, it was 22 This alleged fact is a verbatim repeat of 23 Netlist's position that the MOU should Defendant's alleged SUF in support of 24 govern the supply term. As set forth in its opening Motion for Summary 25 SUF nos. 20 and 31, the MOU only Judgment, No. 36. required that Samsung supply product in 26 27 Disputed. 28

the event that the NVDIMM-P product 1 2 was ever commercialized. Neither Mr. Whitley nor Netlist has 3 ever taken the position that the MOU and not the final JDLA should govern 4 Choi Decl. ¶ 29, Exh. 28 at NL045877; 5 the parties' obligations. ¶ 8, Exh. 7 at 130:6-132:10. 6 7 Plaintiff understands that reference to 8 "SUF nos. 20 and 31" in alleged additional fact No. 16 refers to 9 10 Samsung's alleged SUF nos. 20 and 31 11 asserted in Samsung's Motion for 12 Summary Judgment (not to the 13 additional alleged facts nos. 20 and 31 14 in this document). Plaintiff previously 15 disputed Samsung's characterization of allege SUF 20 and 31 asserted with 16 17 Samsung's Motion for Summary Judgment (see Dkt. 171-1) and Plaintiff 18 19 incorporates that prior response as if set 20 forth here. Plaintiff's prior SUF nos. 20 and 31 also appear to be restated and 21 22 renumbered here as Samsung's 23 additional SUF nos. 26 and 11. Therefore, Plaintiff also incorporates its 24 25 response to those alleged SUF as if set 26 forth here, along with Plaintiff's 27 response to additional alleged SUF 10.

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3		
4		Nowhere does any of the cited material
5		indicate that Netlist or Mr. Whitley
6		were proposing to limit the supply
7		provision to NVDIMM-P.
8		
9		Also disputed as to the materiality of
10		the statement, because the JDLA
11		contains an integration clause ("Except
12		as otherwise stated herein, this
13		Agreement and all Appendices attached
14		hereto supersede all prior proposals,
15		consents, agreements, and discussions,
16		oral or written, between the Parties
17		relating to the subject matter of this
18		Agreement.").
19		
20		Evidence:
21		• Dkt. 148-1 [Samsung MSJ Ex.
22		19] (SEC0000001) at
23		SEC000014.
24	17. Netlist wanted Samsung's assurance	This alleged fact is a verbatim repeat of
25	that it would supply NAND and DRAM	Defendant's alleged SUF in support of
26	to support NVDIMM-P sales if the joint	its opening Motion for Summary
27		Judgment, No. 37.
28		

1	development proved successful, and	
2	demand for the product took off.	Disputed.
3		
4	Choi Decl. ¶ 8, Exh. 7 at 80:13-23.	Netlist wanted Samsung's assurance
5		that it would supply NAND and
6		DRAM at Netlist's request, regardless
7		of whether the joint development
8		proved successful or the demand for the
9		product took off, without limitation to
10		NVDIMM-P.
11		
12		Evidence:
13		• Dkt. 148-1 [Samsung MSJ Ex.
14		19] (SEC0000001) at
15		SEC0000006-0007.
16		
17		Contrary to the statement, Mr. Hong
18		testified that, "from day one" Netlist
19		had not ever "communicate[d] to
20		Samsung that Samsung's obligation to
21		supply NAND and DRAM products
22		would be limited to NVDIMM-P."
23		
24		Evidence:
25		• Dkt. 171-12, Ex. 84 to 8-30-21
26		LaMagna Decl. (Chuck Hong
27		Dep. Tr.) at 238:15-24.
28		NETH LOT DIGGO OT LITTLY TO A CONTROL OF STATE O

1 2 See also Plaintiff's response and 3 evidence to Samsung's alleged additional SUF Nos. 26-27 4 5 incorporated herein. 6 18. During the contract negotiations, This alleged fact is a verbatim repeat of 7 Defendant's alleged SUF in support of Netlist's CFO Gail Sasaki wrote to 8 Samsung: "Both sides understood from its opening Motion for Summary the outset that this was a strategic deal, Judgment, No. 38. 10 not a financial one. The value that 11 would be transferred and created resided Undisputed that the quoted sentence 12 appears in the document. Disputed as in the patents and the technology." 13 to the characterization to the extent 14 Defendant is suggesting that the supply Choi Decl. ¶ 33, Exh. 32 at NL048993. 15 provision was not a strategic 16 consideration to the deal. 17 18 Also disputed that this statement 19 occurred "[d]uring the contract 20 negotiations" to the extent construed to 21 mean the JDLA, as this statement was 22 made related to a different contract with 23 a different entity. This sentence is 24 taken out of context and in an email 25 with a Samsung Semiconductor 26 Industries employee, not a Samsung 27 Electronics employee, about a separate 28

1		negotiation from the JDLA negotiation.
2		The email goes on to state that
3		"Samsung's top management
4		commented that this was not a financial
5		deal and that Samsung did not intend to
6		make money using money," and that
7		the terms "now introduced by Samsung
8		Ventures are, in fact, those of a
9		financial deal."
10		
11		Evidence:
12		• Dkt. 151-2 [Samsung MSJ Ex.
13		32] (NL048993) at NL048993.
14	19. On November 12, 2015, after	This alleged fact is a verbatim repeat of
15	months of negotiations, Samsung and	Defendant's alleged SUF in support of
16	Netlist entered into the JDLA.	its opening Motion for Summary
17		Judgment, No. 13.
18	Choi Decl. ¶ 20, Exh. 19 at p.1.	
19		Undisputed.
20	20. The structure and terms of the JDLA	This alleged fact is a verbatim repeat of
21	reflect that the parties intend "to work	Defendant's alleged SUF in support of
22	together to jointly develop an interface	its opening Motion for Summary
23	and associated technologies for certain	Judgment, No. 14.
24	memory modules and promote such	
25	interface to standards-setting	Undisputed that the quoted language
26	organizations."	appears in the recital to the contract, but
27		disputed that the "structure and terms"
28	L	NETT ICT DIGIC CT A TEN COVER OF CENTURE DIGITAL CO

1		of the JDLA are defined by that recital.
2	Choi Decl. ¶ 20, Exh. 19 at p.1.	The structure in terms of the JDLA on
3		their face contain rights and obligations
4		beyond the subject matter of that
5		recital. See Dkt. 148-1 [Samsung MSJ
6		Ex. 19] in <i>passim</i> .
7	21. The "Developed Product" in the	This alleged fact is a verbatim repeat of
8	JDLA means an NVDIMM-P Product	Defendant's alleged SUF in support of
9	developed by the Parties hereunder	its opening Motion for Summary
10	pursuant the Statement of Work that	Judgment, No. 15.
11	meets the Product Specifications.	
12		Undisputed.
13	Choi Decl. ¶ 20, Exh. 19 at p.2.	
14	" -	This allowed fact is a resolution non-set of
15	22. The JDLA also includes a grant of	This alleged fact is a verbatim repeat of
16	cross-licenses and a release of	Defendant's alleged SUF in support of
17	threatened claims.	its opening Motion for Summary
		Judgment, No. 16.
18	Choi Decl. ¶ 20, Exh. 19 at p.7, § 7.	
19	Chor Been. 20, Eath. 19 at p.7, § 7.	Undisputed that the JDLA includes a
20		grant of license (Section 8) and a
21		release of claims (Section 7), but
22		disputed as to the characterization of
23		"threatened" claims as no claims were
24		threatened.
25		incatched.
26		Exidence
27		Evidence:

1 Dkt. 148-1 [Samsung MSJ Ex. 2 19] (SEC0000001) at pp. 7-8, §§ 3 7-8. 4 5 See also Plaintiff's response and evidence to Samsung additional SUF 6 7 No. 3, supra, incorporated herein. 23. The JDLA states that Netlist was to This alleged fact is a verbatim repeat of 8 receive \$8 million for non-recurring 9 Defendant's alleged SUF in support of 10 engineering on the NVDIMM-P its opening Motion for Summary 11 development work, and concurrently Judgment, No. 17. 12 with the JDLA, provide an additional 13 \$15 million convertible loan at 2% Undisputed that the JDLA states that 14 interest that allowed Netlist to pay off Netlist was to receive \$8 million for in 15 existing debt with less favorable non-recurring engineering fees and that 16 financial terms. Netlist entered into "an agreement for 17 convertible note financing." 18 Choi Decl. ¶ 20, Exh. 19 at p.5, § 3.1; ¶ 19 Disputed as to the characterization—the 21, Exh. 20 at p.2; ¶ 22, Exh. 21 at JDLA does not identify the amount or 20 NL069669, § II.7. 21 interest rate of the debt, which was 22 entered into in a separate contact with a 23 separate entity that is not Defendant. 24 25 Evidence: 26 • Dkt. 148-1 [Samsung MSJ Ex. 27 19] (SEC0000001). 28

1 • Dkt. 151-2 [Samsung MSJ Ex. 2 72] (NL000341). 3 24. In addition to its receipt of cash and This alleged fact is a verbatim repeat of financing from Samsung, Netlist stood Defendant's alleged SUF in support of 4 5 to benefit from the relationship, its opening Motion for Summary especially if the parties were able to 6 Judgment, No. 18. 7 develop this "game changing" standard 8 for NVDIMM-P and produce a Undisputed that in addition to its 9 commercially feasible product under receipt of cash, Netlist stood to benefit 10 this standard. from the relationship defined in the 11 JDLA. 12 Choi Decl. ¶ 8, Exh. 7 at 31:9-12, 13 Disputed that Netlist received financing 33:12-34:6, 79:6-80:23, 139:7-25. 14 from Defendant. Netlist receives 15 secured debt financing (a loan) from a 16 different entity. 17 18 Evidence: 19 See Dkt. 151-2 [Samsung MSJ 20 Ex. 72] (NL000341). 21 22 Also disputed as to the characterization 23 imposed by the phrase "especially if." 24 Netlist stood to benefit from the 25 relationship regardless of the joint 26 development, as did Samsung. 27 28

1		Defendant's cited supporting evidence
2		does not support the fact. Defendant
3		mischaracterizes Chuck Hong's
4		deposition testimony regarding
5		"HybriDIMM," which is what Mr.
6		Hong was referring to by the "game
7		changing" reference. See also
8		Plaintiff's response and evidence to
9		Samsung's additional SUF No. 2,
10		supra, incorporated herein.
11	25. The terms of the JDLA seek to	This alleged fact is a verbatim repeat of
12	implement these objectives, including	Defendant's alleged SUF in support of
13	terms for the collaborative development	its opening Motion for Summary
14	work in accordance with product	Judgment, No. 19.
15	specification and development	
16	milestones and a Statement of Work	Netlist does not dispute the terms of
17	(Section 2, Appendices A and B);	what is written in the JDLA, which
18	development costs (Section 3); IPR	contains the various sections described
19	ownership (Section 4); schedule for	in Defendant's additional SUF No. 25.
20	standardization and productization	The document speaks for itself.
21	(Section 5); supply (Section 6); a mutual	
22	release of claims (Section 7); and	Disputed as to Defendant's reference of
23	licensing of intellectual property	"these objectives" which is not defined
24	(Section 8).	here. The parties dispute the objective
25		of the JDLA. Plaintiff asserts that one
26	Choi Decl. ¶ 20, Exh. 19 at pp.4-8.	objective of the JDLA was to obtain a
27	Choi Deei. 20, Dan. 17 at pp. 7-0.	supply obligation from Samsung, which

		,
1		is disputed by Samsung.
2		
3		Evidence:
4		• Complaint, Dkt 13, at 4.
5		• Answer, Dkt. 27 at 2-3.
6	26. Pursuant to the JDLA, Samsung and	This alleged fact is a verbatim repeat of
7	Netlist agreed to supply components to	Defendant's alleged SUF in support of
8	each other for the NVDIMM-P product	its opening Motion for Summary
9	which they had agreed to jointly	Judgment, No. 20.
10	develop and therefore did not yet exist.	
11	Specifically, Section 6.1 states: "Supply	Undisputed that Sections 6.1 and 6.2 of
12	by Netlist. Netlist will provide Samsung	the JDLA contain the language quoted
13	any NVDIMM-P controller on	by Defendant.
14	Samsung's request at a price lower than	
15	the price Netlist provides to any other	Disputed that Section 6.2 is a "parallel"
16	buyer." Section 6.2, the parallel	provision to Section 6.1.
17	provision, states: "Supply by Samsung.	
18	Samsung will supply NAND and	Disputed as to Samsung's
19	DRAM products to Netlist on Netlist's	characterization and contention that
20	request at a competitive price (i.e.,	Section 6.2 is limited to components for
21	among customers purchasing similar	the NVDIMM-P products. Nothing in
22	volumes of similar products)."	Section 6.2 referring to such a
23		limitation.
24	Choi Decl. ¶ 20, Exh. 19 at p.6, §§ 6.1,	
25	6.2.	Evidence:
26	0.2.	• Dkt. 148-1 [Samsung MSJ Ex.
27		19] (SEC0000001) at § 6.2.
28		

1 2 Samsung's own employees also 3 recognized that the supply obligation was not limited to components for the 4 5 NVDIMM-P product. 6 7 Evidence: 8 Dkt. 142-10 [Netlist MSJ Ex. 23] 9 (SEC000263) (February 2018 email from Yong Hwangbo, 10 11 "there is an obligation to supply 12 NAND/DRAM at a competitive 13 price if N company makes a 14 request.") 15 Dkt. 145-12 [Netlist MSJ Ex. 8] (SEC000315) (February 2018 16 email from Yong Hwangbo, 17 "there is an obligation to supply 18 19 NAND/DRAM at a competitive 20 price if N company makes a 21 request.") 22 Dkt. 145-11 [Netlist MSJ Ex. 7] 23 (SEC001269) (January 2018 24 email from Hojung Kim, 25 "Pursuant to the agreement, 26 supply for NAND and DRAM 27 products is necessary if there is a 28

request from Netlist.") 1 2 3 Netlist has publicly, over multiple years, indicated that the Section 6.2 4 5 supply obligation was not limited to 6 merely components for NVDIMM-P. 7 8 Evidence: 9 E.g., Dkt. 150-4 [Samsung MSJ Ex. 37] at p.5 ("We also resell 10 11 certain Samsung products that 12 we purchase under the terms of 13 our JDLA"); p.7 ("we resell 14 certain Samsung products that 15 we purchase under the terms of our JDLA"), p.8 ("[O]ur JDLA 16 17 with Samsung contractually commits Samsung to supply 18 19 NAND flash and DRAM products to us upon our request 20 21 at competitive prices.") 22 Dkt. 150-2 [Samsung MSJ Ex. 6] 23 at p.5 ("We have purchased 24 certain of these products, 25 including NAND flash and 26 DRAM products, from Samsung 27 under the terms of the JDLA."), 28

1	p.8 ("We also purchase some of
2	these component products from
3	Samsung under the terms of the
4	JDLA.")
5	• Dkt. 150-2 [Samsung MSJ Ex. 4]
6	at p.5 ("We have purchased
7	certain of these products,
8	including NAND flash and
9	DRAM products, from Samsung
10	under the terms of the JDLA"),
11	p. 8 ("We also purchase some of
12	these component products from
13	Samsung under the terms of the
14	JDLA, and from alternative
15	suppliers, for the purpose of
16	resale to customers directly").
17	• Dkt. 150-4 [Samsung MSJ Ex.
18	38] at p.5 ("We have purchased
19	certain of these products,
20	including SSDs, NAND flash
21	and DRAM products, from
22	Samsung under the terms of the
23	JDLA"), p.7 ("We also purchase
24	some of these component
25	products from Samsung under
26	the terms of the JDLA").
27	• See also Dkt. 171-13, Ex. 85 to
28	

1	8-30-21 LaMagna Decl. (Gail
2	Sasaki Dep. Tr.) at 305:14-306:3,
3	309:1-21 (In connection with the
4	SEC filings' statements
5	concerning the absence of long-
6	term supply contracts, Gail
7	testified that the statement
8	appeared in portions of Netlist's
9	filings concerning "risk factors"
10	in which its general approach
11	was to "be[] very conservative
12	to say all the negative things that
13	[it] would to make sure that
14	should anything go wrong with
15	anything" all risks had been fully
16	disclosed to "the public.").
17	• Dkt. 171-24, Ex. 96 to 8-30-21
18	LaMagna Decl. (Q2 2016
19	Earnings Call) ("[T]hat was part
20	of the partnership and agreement
21	that we have with Samsung to
22	have access to their raw materials
23	as well as their – some of their
24	selected product lines and we are
25	seeing the benefit of that.").
26	• Dkt. 171-25, Ex. 97 to 8-30-21
27	LaMagna Decl. (Q3 2016
28	NETLIST INC'S STATEMENT OF GENLINE DISPLITES OF

1	Earnings Call) ("In our	
2	partnership with Samsung	g, we
3	continue to benefit from t	he
4	unique access we have	. to
5	certain Samsung products	in the
6	enterprise space. This inc	ludes
7	enterprise-grade, high- ca	pacity
8	SSDs and high-density D	RAM
9	modules. Product lines [t	hat]
10	Samsung is committed to	
11	supporting for the long-te	rm.
12	We have continued to gro	w the
13	customer base for these p	roducts
14	since we began shipments	s earlier
15	this year.").	
16	• Id. ("Further, the Samsun	g
17	Corporation products pro	vide
18	synergistic value for our o	own
19	product portfolio and ope	n doors
20	allowing our sales team to)
21	establish relationships with	th
22	OEMs and data center	
23	customers.").	
24	• Dkt. 171-26, Ex. 98 to 8	-30-21
25	LaMagna Decl. (Q1 201	7
26	Earnings Call) ("The year	ar-over-
27	year increase in revenue	
28		IE DIGDIETE OF

1	primarily reflects the multiple	
2	benefits of our Joint	
3	Development Agreement with	
4	Samsung, which added the	
5	synergistic Samsung high-end	
6	memory products to our product	
7	offering. On a consecutive	
8	quarterly basis, product revenue	
9	improved by 70%.).	
10	• Dkt. 171-12, Ex. 84 to 8-30-21	
11	LaMagna Decl. (Chuck Hong	
12	Dep. Tr.) at 238:15-24	
13	(testifying that Netlist never	
14	"communicate[d] to Samsung	
15	that Samsung's obligation to	
16	supply NAND and DRAM	
17	products would be limited to	
18	NVDIMM-P.")	
19	• Dkt. 171-12, Ex. 84 to 8-30-21	
20	LaMagna Decl. (Chuck Hong	
21	Dep. Tr.) at 220:3-24, 222:19-	
22	223:8, 221:11-14, 238:15-24	
23	(Netlist "absolutely [did] not"	
24	understand that the JDLA's	
25	supply provisions were "limited	
26	to NVDIMM-P" and it would	
27	not have executed the JDLA	
28		

1		had that been its understanding
2		because it would not have
3		provided sufficient
4		consideration to Netlist. Nor did
5		Samsung ever state to Netlist
6		that its mandatory supply
7		obligation was "limited to
8		components for making
9		NVDIMM-P products.")
10		
11		See also Plaintiff's response and
12		evidence to Samsung's addition SUF
13		Nos. 17, 27 here as if incorporated
14		herein.
15	27. Samsung's supply obligations would	This alleged fact is a verbatim repeat of
16	only arise if and to the extent that the	Defendant's alleged SUF in support of
17	NVDIMM-P product was	its opening Motion for Summary
18	commercialized but this never occurred.	Judgment, No. 21.
19		
20	Choi Decl. ¶ 8, Exh. 7 at 31:9-12,	Disputed. Samsung's own employees
21	80:13-23, 92:4-12, 109:9-110:1, 116:3-	understood that it had a supply
22	9; ¶ 22, Exh. 21 at NL069668-69.	obligation to Netlist, and that this
23	<i>γ</i> , 22, Lλii. 21 at i√L007000-07.	supply obligation was <i>not</i> dependent on
24		the commercialization of NVDIMM-P.
25		See Plaintiff's response to Samsung's
26		additional alleged SUF No. 26, supra,
27		incorporated herein.
28		

1	
2	Evidence:
3	• Dkt. 145-18 [Netlist MSJ Ex. 14]
4	(NL119258) (P.K. Hong's notes
5	from meeting with Samsung in
6	February 2016: "HS mentioned
7	that he is now being <i>told to</i>
8	support Netlist and will', "HS
9	stated he will support any
10	requests"; "But the positive note
11	is Samsung will support")
12	• Dkt. 142-10 [Netlist MSJ Ex. 23]
13	(SEC000263) (February 2018
14	email from Yong Hwangbo,
15	"there is an obligation to supply
16	NAND/DRAM at a competitive
17	price if N company makes a
18	request.")
19	• Dkt. 145-12 [Netlist MSJ Ex. 8]
20	(SEC000315) (February 2018
21	email from Yong Hwangbo,
22	"there is an obligation to supply
23	NAND/DRAM at a competitive
24	price if N company makes a
25	request.")
26	• Dkt. 145-11 [Netlist MSJ Ex. 7]
27	(SEC001269) (January 2018
28	

email from Hojung Kim, 1 "Pursuant to the agreement, 2 3 supply for NAND and DRAM products is necessary if there is a 4 5 request from Netlist.") 6 7 From "day one," Netlist's position from 2015 to present has always been that 8 9 Section 6.2's supply obligation was not 10 limited to NVDIMM-P products. See 11 Plaintiff's response and evidence to 12 Samsung's additional alleged SUF Nos. 13 17 and 26 as if incorporated herein. 14 15 Netlist understood that by entering into the JDLA, it had transitioned from an 16 17 "at-will customer . . . into a contractual supply customer, which means [it] 18 would go right to the front of the line" 19 20 in obtaining the products that Samsung 21 had for sale and that its requests "must 22 be filled ahead of everyone" else. 23 24 Evidence: 25 E.g., Dkt. 150-4 [Samsung MSJ 26 Ex. 37] at p.5 ("We also resell 27 certain Samsung products that 28

1	we purchase under the terms of
2	our JDLA"); p.7 ("we resell
3	certain Samsung products that
4	we purchase under the terms of
5	our JDLA"), p.8 ("[O]ur JDLA
6	with Samsung contractually
7	commits Samsung to supply
8	NAND flash and DRAM
9	products to us upon our request
10	at competitive prices.")
11	• Dkt. 150-2 [Samsung MSJ Ex. 6]
12	at p.5 ("We have purchased
13	certain of these products,
14	including NAND flash and
15	DRAM products, from Samsung
16	under the terms of the JDLA."),
17	p.8 ("We also purchase some of
18	these component products from
19	Samsung under the terms of the
20	JDLA.")
21	• Dkt. 150-2 [Samsung MSJ Ex. 4]
22	at p.5 ("We have purchased
23	certain of these products,
24	including NAND flash and
25	DRAM products, from Samsung
26	under the terms of the JDLA"),
27	p. 8 ("We also purchase some of
28	

1	these component products from
2	Samsung under the terms of the
3	JDLA, and from alternative
4	suppliers, for the purpose of
5	resale to customers directly").
6	Dkt. 150-4 [Samsung MSJ Ex.
7	38] at p.5 ("We have purchased
8	certain of these products,
9	including SSDs, NAND flash
10	and DRAM products, from
11	Samsung under the terms of the
12	JDLA"), p.7 ("We also purchase
13	some of these component
14	products from Samsung under
15	the terms of the JDLA").
16	• See also Dkt. 171-13, Ex. 85 to
17	8-30-21 LaMagna Decl. (Gail
18	Sasaki Dep. Tr.) at 305:14-306:3,
19	309:1-21 (In connection with the
20	SEC filings' statements
21	concerning the absence of long-
22	term supply contracts, Gail
23	testified that the statement
24	appeared in portions of Netlist's
25	filings concerning "risk factors"
26	in which its general approach
27	was to "be[] very conservative
28	

1	to say all the negative things that
2	[it] would to make sure that
3	should anything go wrong with
4	anything" all risks had been fully
5	disclosed to "the public.").
6	• Dkt. 171-24, Ex. 96 to 8-30-21
7	LaMagna Decl. (Q2 2016
8	Earnings Call) ("[T]hat was part
9	of the partnership and agreement
10	that we have with Samsung to
11	have access to their raw materials
12	as well as their – some of their
13	selected product lines and we are
14	seeing the benefit of that.").
15	• Dkt. 171-25, Ex. 97 to 8-30-21
16	LaMagna Decl. (Q3 2016
17	Earnings Call) ("In our
18	partnership with Samsung, we
19	continue to benefit from the
20	unique access we have to
21	certain Samsung products in the
22	enterprise space. This includes
23	enterprise-grade, high- capacity
24	SSDs and high-density DRAM
25	modules. Product lines [that]
26	Samsung is committed to
27	supporting for the long-term.
28	

1	We have continued to grow the
2	customer base for these products
3	since we began shipments earlier
4	this year.").
5	• <i>Id.</i> ("Further, the Samsung
6	Corporation products provide
7	synergistic value for our own
8	product portfolio and open doors
9	allowing our sales team to
10	establish relationships with
11	OEMs and data center
12	customers.").
13	• Dkt. 171-26, Ex. 98 to 8-30-21
14	LaMagna Decl. (Q1 2017
15	Earnings Call) ("The year-over-
16	year increase in revenue
17	primarily reflects the multiple
18	benefits of our Joint
19	Development Agreement with
20	Samsung, which added the
21	synergistic Samsung high-end
22	memory products to our product
23	offering. On a consecutive
24	quarterly basis, product revenue
25	improved by 70%.).
26	• Dkt. 171-12, Ex. 84 to 8-30-21
27	LaMagna Decl. (Chuck Hong
28	

1		Dep. Tr.) at 124:5-9 (testifying
2		that "the JDLA represented to
3		move us from a non-customer
4		and bypass the at-will customer.
5		and tun us into a contractual
6		supply customer."); 124:13-19
7		("contracted customers, their
8		obligations must be filled
9		ahead of everyone".).
10	28. Netlist received all of the chips it	This alleged fact is a verbatim repeat of
11	needed to complete the initial phase of	Defendant's alleged SUF in support of
12	the NVDIMM-P product under the	its opening Motion for Summary
13	JDLA.	Judgment, No. 46.
14		
15	Choi Decl. ¶ 8 Evh. 7 at 88:10-89:5	Disputed.
	Choi Decl. ¶ 8, Exh. 7 at 88:10-89:5.	Disputed.
15	Choi Decl. ¶ 8, Exh. 7 at 88:10-89:5.	Disputed. Defendant's cited supporting evidence
15 16	Choi Decl. ¶ 8, Exh. 7 at 88:10-89:5.	
15 16 17	Choi Decl. ¶ 8, Exh. 7 at 88:10-89:5.	Defendant's cited supporting evidence
15 16 17 18	Choi Decl. ¶ 8, Exh. 7 at 88:10-89:5.	Defendant's cited supporting evidence does not support the fact. Mr. Chuck
15 16 17 18 19	Choi Decl. ¶ 8, Exh. 7 at 88:10-89:5.	Defendant's cited supporting evidence does not support the fact. Mr. Chuck Hong did not testify as to this fact. As
15 16 17 18 19 20	Choi Decl. ¶ 8, Exh. 7 at 88:10-89:5.	Defendant's cited supporting evidence does not support the fact. Mr. Chuck Hong did not testify as to this fact. As noted below, the development of the
15 16 17 18 19 20 21	Choi Decl. ¶ 8, Exh. 7 at 88:10-89:5.	Defendant's cited supporting evidence does not support the fact. Mr. Chuck Hong did not testify as to this fact. As noted below, the development of the NVDIMM-P product itself was never
15 16 17 18 19 20 21 22	Choi Decl. ¶ 8, Exh. 7 at 88:10-89:5.	Defendant's cited supporting evidence does not support the fact. Mr. Chuck Hong did not testify as to this fact. As noted below, the development of the NVDIMM-P product itself was never
15 16 17 18 19 20 21 22 23	Choi Decl. ¶ 8, Exh. 7 at 88:10-89:5.	Defendant's cited supporting evidence does not support the fact. Mr. Chuck Hong did not testify as to this fact. As noted below, the development of the NVDIMM-P product itself was never finished under the JDLA.
15 16 17 18 19 20 21 22 23 24	Choi Decl. ¶ 8, Exh. 7 at 88:10-89:5.	Defendant's cited supporting evidence does not support the fact. Mr. Chuck Hong did not testify as to this fact. As noted below, the development of the NVDIMM-P product itself was never finished under the JDLA. Evidence:
15 16 17 18 19 20 21 22 23 24 25	Choi Decl. ¶ 8, Exh. 7 at 88:10-89:5.	Defendant's cited supporting evidence does not support the fact. Mr. Chuck Hong did not testify as to this fact. As noted below, the development of the NVDIMM-P product itself was never finished under the JDLA. Evidence: • Dkt. 157-4 [Samsung MSJ Ex. 7]

1		dash P never became a
2		product").
3		
4		Also disputed as immaterial because
5		Section 6.2 of the JDLA is not limited
6		to the completion of the initial phase of
7		the NVDIMM-P product.
8		
9		Evidence:
10		• Dkt. 148-1 [Samsung MSJ Ex. 19]
11		(SEC0000001) at § 6.2.
12	29. The NVDIMM-P product was never	This alleged fact is a verbatim repeat of
13	commercialized.	Defendant's alleged SUF in support of
14		its opening Motion for Summary
15	Choi Decl. ¶ 8, Exh. 7 at 109:21-110:1.	Judgment, No. 47.
16	Choi Deci. 6, Lan. / at 103.21-110.1.	
17		Undisputed.
18	30. Netlist disclosed an agreement with	This alleged fact is a verbatim repeat of
19	SK Hynix on April 5, 2021, stating that	Defendant's alleged SUF in support of
20	contract "entitles Netlist to purchase up	its opening Motion for Summary
21	to \$600,000,000 of SK Hynix memory	Judgment, No. 40.
22	products during the term"	
23		Undisputed.
24	Choi Decl. ¶ 34, Exh. 33 at p.2.	
25	31. Netlist CEO Chuck Hong's	This alleged fact is a verbatim repeat of
26	presentation to the Board in November	Defendant's alleged SUF in support of
27	presentation to the Board in November	Detendant a uneged 501 in support of

2015, prepared by Netlist CFO Gail 1 its opening Motion for Summary 2 Sasaki, describes the technology Judgment, No. 41. 3 collaboration and the cross-licensing of patents but makes no mention of Disputed. 4 5 Netlist's supposed broad supply Defendant's cited supporting evidence 6 agreement. 7 does not support the fact. Defendant 8 does not cite to any board presentation, Choi Decl. ¶ 35, Exh. 34 at NL117923; 9 but rather to an email containing draft ¶ 36, Exh. 35 at p.1. 10 materials. Defendant fails to identify 11 supporting evidence for its fact. 12 13 Also disputed as immaterial. The 14 absence of a specific reference to 15 Samsung's supply obligation in a presentation to Netlist's Board does not 16 17 negate the existence of Samsung's contractual obligations, as stated in 18 19 Section 6.2. 20 21 Evidence: 22 Dkt. 148-1 [Samsung MSJ Ex. 23 19] (SEC0000001) at Section 24 6.2. 25 26 In addition, it's immaterial because the 27 JDLA contains an integration clause

("Except as otherwise stated herein, this 1 2 Agreement and all Appendices attached 3 hereto supersede all prior proposals, consents, agreements, and discussions, 4 5 oral or written, between the Parties 6 relating to the subject matter of this 7 Agreement."). 8 9 Evidence: 10 • Dkt. 148-1 [Samsung MSJ Ex. 11 19] (SEC0000001) at 12 SEC000014. 32. In its first annual report following This alleged fact is a verbatim repeat of 13 14 the JDLA, Netlist disclosed the risks Defendant's alleged SUF in support of 15 associated with not having a supply its opening Motion for Summary 16 contract: Judgment, No. 42. 17 "Our ability to fulfill customer orders or 18 Undisputed that the language quoted produce qualification samples is appears in the cited document. 19 dependent on a sufficient supply of field 20 programmable gate arrays ("FPGAs"), 21 Disputed as to the characterization that DRAM ICs and NAND flash, which are 22 Netlist disclosed that it did "not hav[e] essential components of our memory 23 a supply contract" (i.e., with Samsung), subsystems. There are a relatively small 24 as the quoted language is taken out of number of suppliers of FPGAs, DRAM 25 context. Samsung quotes only the ICs and NAND flash, and we purchase 26 generalized "risk factors" for the from only a subset of these suppliers. 27 company—carried over from 28

We have no long-term FPGA, DRAM 1 disclosures made in earlier years (see 2 or NAND flash supply contracts." Ex. 3 (2014 10-K) at p. 14, Ex. 73 3 (emphasis added) (2012 10-K) at p. 18, Ex. 74 (2013 10-K) at p. 22)—without regard to the 4 5 specific disclosures expressly related to Choi Decl. ¶ 19, Exh. 18 at p.13. 6 the JDLA made in the very same 7 document. 8 9 First, Samsung ignores the express 10 disclosure in the same cited document 11 (Samsung MSJ Ex. 18, which is the 12 same document as Samsung MSJ Ex. 13 36) that expressly states that Netlist has 14 a supply contract with Samsung: 15 "Further, our JDLA with Samsung 16 contractually commits Samsung to 17 supply NAND flash and DRAM 18 products to us on our request at 19 competitive prices." 20 21 Evidence: 22 Dkt. 150-3 [Samsung MSJ Ex. 23 18 (see also Ex. 36, same)] at p. 6 (emphasis added). 24 25 26 Consistently and continuously, for 27 every year since 2015, Netlist likewise 28

repeatedly represented in other SEC 1 2 filings that it had a supply contract with 3 Samsung. 4 5 Evidence: 6 E.g., Dkt. 150-4 [Samsung MSJ Ex. 37] at p.5 ("We also resell 7 certain Samsung products that 8 9 we purchase under the terms of our JDLA"); p.7 ("we resell 10 11 certain Samsung products that 12 we purchase under the terms of 13 our JDLA"), p.8 ("[O]ur JDLA 14 with Samsung contractually 15 commits Samsung to supply 16 NAND flash and DRAM 17 products to us upon our request at competitive prices.") 18 19 Dkt. 150-2 [Samsung MSJ Ex. 6] at p.5 ("We have purchased 20 21 certain of these products, 22 including NAND flash and 23 DRAM products, from Samsung 24 under the terms of the JDLA."), 25 p.8 ("We also purchase some of 26 these component products from 27 Samsung under the terms of the 28

1	JDLA.")
2	• Dkt. 150-2 [Samsung MSJ Ex. 4]
3	at p.5 ("We have purchased
4	certain of these products,
5	including NAND flash and
6	DRAM products, from Samsung
7	under the terms of the JDLA"),
8	p. 8 ("We also purchase some of
9	these component products from
10	Samsung under the terms of the
11	JDLA, and from alternative
12	suppliers, for the purpose of
13	resale to customers directly").
14	• Dkt. 150-4 [Samsung MSJ Ex.
15	38] at p.5 ("We have purchased
16	certain of these products,
17	including SSDs, NAND flash
18	and DRAM products, from
19	Samsung under the terms of the
20	JDLA"), p.7 ("We also purchase
21	some of these component
22	products from Samsung under
23	the terms of the JDLA").
24	• See also Dkt. 171-13, Ex. 85 to
25	8-30-21 LaMagna Decl. (Gail
26	Sasaki Dep. Tr.) at 305:14-306:3,
27	309:1-21 (In connection with the
28	

SEC filings' statements 1 concerning the absence of long-2 3 term supply contracts, Gail testified that the statement 4 5 appeared in portions of Netlist's filings concerning "risk factors" 6 7 in which its general approach was to "be[] very conservative 8 to say all the negative things that 9 10 [it] would to make sure that 11 should anything go wrong with 12 anything" all risks had been fully 13 disclosed to "the public."). 14 15 And this is consistent with Netlist's other public statements, such as on 16 17 investor earnings calls, when Netlist repeatedly referenced its agreement 18 with Samsung, including the fact that 19 20 the agreement covered the sale of 21 NAND and DRAM product without 22 being limited to components for NVDIMM-P. 23 24 25 **Evidence:** 26 Ex. 96 to 8-30-21 LaMagna 27 Decl. (Q2 2016 Earnings Call) 28

1	("[T]hat was part of the
2	partnership and agreement that
3	we have with Samsung to have
4	access to their raw materials as
5	well as their – some of their
6	selected product lines and we are
7	seeing the benefit of that.").
8	• Ex. 97 to 8-30-21 LaMagna
9	Decl. (Q3 2016 Earnings Call)
10	("In our partnership with
11	Samsung, we continue to benefit
12	from the unique access we have .
13	to certain Samsung products in
14	the enterprise space. This
15	includes enterprise-grade, high-
16	capacity SSDs and high-density
17	DRAM modules. Product lines
18	[that] Samsung is committed to
19	supporting for the long-term.
20	We have continued to grow the
21	customer base for these products
22	since we began shipments earlier
23	this year.").
24	• <i>Id.</i> ("Further, the Samsung
25	Corporation products provide
26	synergistic value for our own
27	product portfolio and open doors
28	

allowing our sales team to 1 2 establish relationships with 3 OEMs and data center 4 customers."). 5 Ex. 98 to 8-30-21 LaMagna Decl. (Q1 2017 Earnings Call) 6 7 ("The year-over-year increase in revenue primarily reflects the 8 9 multiple benefits of our Joint 10 Development Agreement with 11 Samsung, which added the 12 synergistic Samsung high-end memory products to our product 13 14 offering. On a consecutive 15 quarterly basis, product revenue 16 improved by 70%.). 33. Netlist repeatedly and consistently This alleged fact is a verbatim repeat of 17 Defendant's alleged SUF in support of 18 disclosed the risks associated with not 19 having a long-term supply contract for its opening Motion for Summary 20 DRAM and NAND in its annual reports Judgment, No. 43. 21 before and after execution of the JDLA, 22 each time stating that Netlist had "no Undisputed that the language quoted 23 long-term supply contracts" for these appears in the cited document. 24 products. 25 Disputed as to the characterization that 26 Netlist disclosed that it did "not hav[e] 27 a supply contract" (i.e., with Samsung),

Choi Decl. ¶ 74, Exh. 73 at p.18; ¶ 75, as the quoted language is taken out of 1 2 Exh. 74 at p.22; ¶ 4, Exh. 3 at p.14; ¶ context. Samsung quotes only the 3 37, Exh. 36 at p.14; ¶ 19, Exh. 18 at generalized "risk factors" for the company—carried over from 4 p.13; ¶ 38, Exh. 37 at p.19; ¶ 7, Exh. 6 5 at p.20; ¶ 5, Exh. 4 at p.22; ¶ 39, Exh. disclosures made in earlier years (see 6 38 at p.20; ¶ 40, Exh. 39 at p.15. Ex. 3 (2014 10-K) at p. 14, Ex. 73 7 (2012 10-K) at p. 18, Ex. 74 (2013 10-8 K) at p. 22)—without regard to the 9 specific disclosures expressly related to 10 the JDLA made in the same document. 11 12 First, Samsung ignores the express 13 disclosure in the quoted document 14 (Samsung MSJ Ex. 18, which is the 15 same document as Samsung MSJ Ex. 16 36) that expressly states that Netlist has 17 a supply contract with Samsung: 18 "Further, our JDLA with Samsung 19 contractually commits Samsung to 20 supply NAND flash and DRAM 21 products to us on our request at 22 competitive prices." 23 24 Evidence: 25 Dkt. 150-3 [Samsung MSJ Ex. 26 18 (see also Ex. 36, same)] at p. 27 6. 28

1 2 Consistently and continuously, for 3 every year since 2015, Netlist likewise repeatedly represented in other SEC 4 5 filings that it had a supply contract with 6 Samsung. 7 8 Evidence: 9 E.g., Dkt. 150-4 [Samsung MSJ Ex. 37] at p.5 ("We also resell 10 11 certain Samsung products that 12 we purchase under the terms of 13 our JDLA"); p.7 ("we resell 14 certain Samsung products that 15 we purchase under the terms of our JDLA"), p.8 ("[O]ur JDLA 16 with Samsung contractually 17 commits Samsung to supply 18 19 NAND flash and DRAM 20 products to us upon our request 21 at competitive prices.") 22 Dkt. 150-2 [Samsung MSJ Ex. 6] 23 at p.5 ("We have purchased 24 certain of these products, 25 including NAND flash and 26 DRAM products, from Samsung 27 under the terms of the JDLA."), 28

1	p.8 ("We also purchase	e some of
2	these component produ	ucts from
3	Samsung under the ter	ms of the
4	4 JDLA.")	
5	• Dkt. 150-2 [Samsung]	MSJ Ex. 4
6	6 (2018 10-K)] at p.5 (" ¹	We have
7	purchased certain of the	nese
8	products, including NA	AND flash
9	and DRAM products,	from
10	Samsung under the ter	ms of the
11	JDLA"), p. 8 ("We als	o purchase
12	some of these compon	ent
13	products from Samsun	g under
14	4 the terms of the JDLA	, and from
15	5 alternative suppliers, f	or the
16	purpose of resale to cu	stomers
17	directly").	
18	• Dkt. 150-4 [Samsung]	MSJ Ex.
19	9 38 (2019 10-K)] at p.5	("We
20	have purchased certain	of these
21	products, including SS	Ds,
22	NAND flash and DRA	M
23	products, from Samsur	ng under
24	4 the terms of the JDLA	"), p.7
25	5 ("We also purchase so	me of
26	these component produ	ucts from
27	7 Samsung under the ter	ms of the
28	8	

JDLA"). 1 2 See also Dkt. 171-13, Ex. 85 to 3 8-30-21 LaMagna Decl. (Gail Sasaki Dep. Tr.) at 305:14-306:3, 4 5 309:1-21 (In connection with the SEC filings' statements 6 7 concerning the absence of longterm supply contracts, Gail 8 9 testified that the statement 10 appeared in portions of Netlist's 11 filings concerning "risk factors" in which its general approach 12 13 was to "be[] very conservative 14 to say all the negative things that 15 [it] would to make sure that should anything go wrong with 16 anything" all risks had been fully 17 disclosed to "the public.") 18 19 20 And this is consistent with Netlist's 21 other public statements, such as on 22 investor earnings calls, when Netlist 23 repeatedly referenced its agreement 24 with Samsung, including the fact that 25 the agreement covered the sale of 26 NAND and DRAM product without 27 being limited to components for 28

NVDIMM-P. 1 2 3 Evidence: 4 • Ex. 96 to 8-30-21 LaMagna Decl. (Q2 2016 Earnings Call) 5 ("[T]hat was part of the 6 7 partnership and agreement that we have with Samsung to have 8 9 access to their raw materials as 10 well as their – some of their 11 selected product lines and we are seeing the benefit of that."). 12 13 Ex. 97 to 8-30-21 LaMagna 14 Decl. (Q3 2016 Earnings Call) ("In our partnership with 15 Samsung, we continue to benefit 16 17 from the unique access we have. ... to certain Samsung products in 18 the enterprise space. This 19 20 includes enterprise-grade, high-21 capacity SSDs and high-density DRAM modules. Product lines 22 23 [that] Samsung is committed to 24 supporting for the long-term. 25 We have continued to grow the 26 customer base for these products 27 since we began shipments earlier 28

1	this year.").
2	• <i>Id.</i> ("Further, the Samsung
3	Corporation products provide
4	synergistic value for our own
5	product portfolio and open doors
6	allowing our sales team to
7	establish relationships with
8	OEMs and data center
9	customers.").
10	• Ex. 98 to 8-30-21 LaMagna
11	Decl. (Q1 2017 Earnings Call)
12	("The year-over-year increase in
13	revenue primarily reflects the
14	multiple benefits of our Joint
15	Development Agreement with
16	Samsung, which added the
17	synergistic Samsung high-end
18	memory products to our product
19	offering. On a consecutive
20	quarterly basis, product revenue
21	improved by 70%.).
22	
23	Samsung even ignores nearby language
24	in the "risk factors" disclosures in
25	Netlist's statements where Netlist
26	expressly discusses Samsung's supply
27	of products to Netlist under the JDLA.
28	

1		
2		Evidence:
3		• <i>E.g.</i> , Dkt. 150-4 [Samsung MSJ
4		Ex. 37] at p. 24 ("we resell
5		certain Samsung products that
6		we purchase under the terms of
7		our JDLA with Samsung")
8		• Ex. 6 (2017 10-K) at p. 17
9		(referring to Samsung's "failure
10		to comply with the terms of the
11		JDLA regarding the supply of
12		these products")
13		• Ex. 4 (2018 10-K) at p. 19
14		(referring to Samsung's "failure
15		to comply with the terms of the
16		JDLA regarding the supply of
17		these products")
18		• Dkt. 150-4 [Samsung MSJ Ex.
19		38 (2019 10-K)] at p. 18
20		(referring to Samsung's "failure
21		to comply with the terms of the
22		JDLA regarding the supply of
23		these products")
24	34. A November 2, 2015 press release	This alleged fact is a verbatim repeat of
25	announcing the JDLA that Netlist was	Defendant's alleged SUF in support of
26	preparing had a headline stating "Netlist	its opening Motion for Summary
27	and Samsung Announce Strategic	Judgment, No. 44.
28		

1	Alliance To Commercialize the First	
2	Unified Memory-Storage Architecture"	Disputed and immaterial.
3	and makes no mention of a supply	
4	agreement.	Defendant's cited supporting evidence
5		does not support the fact. Defendant's
6	Choi Decl. ¶ 41, Exh. 40 at pp.2-5.	cited evidence is a draft containing
7	Chor Been. 11, Exil. 10 at pp.2 3.	proposed edits in tracked changes. It is
8		not a November 2, 2015 press release.
9		Moreover, the JDLA contains a
10		confidentiality clause whereby Netlist
11		cannot disclose in a press release unless
12		Samsung consents to that disclosure.
13		Here, Defendant offers no evidence that
14		it ever consented to that disclosure.
15		Regardless, it is immaterial because the
16		presence or the absence of a discussion
17		about Section 6.2 in a press release
18		does not negate the existence of Section
19		6.2 in the contract itself.
20	35. At a February 21, 2017 meeting,	This alleged fact is a verbatim repeat of
21	Netlist asked Samsung for a "New	Defendant's alleged SUF in support of
22	Partner Type" relationship that would	its opening Motion for Summary
23	require Samsung to provide "Product	Judgment, No. 45.
24	Allocation support for Netlist" and an	
25	"Official-Distributor Partnership	Disputed but immaterial.
26	Agreement." When Netlist made this	
27	ask, Samsung told Netlist that the JDLA	Defendant's cited supporting evidence
20		1

does not state the characterization 1 was not an avenue to support Netlist's 2 standard products. ascribed to it by Defendant. 3 Choi Decl. ¶ 17, Exh. 16 at SEC008148, It is immaterial because the fact that 4 SEC008169; ¶ 42, Exh. 41 at 5 Netlist wanted to discuss a "new SEC000474; ¶ 43, Exh. 42 at 43:22-6 partner type strategic development and 45:3. 7 distribution" with Samsung, which would include recognition of Netlist as 8 "an Official-Distributor partner[]" even 9 10 lower OEM pricing, inventory 11 management by Samsung (instead of 12 Netlist needing to take delivery of all 13 orders), does not mean that Samsung 14 did not have an existing supply 15 obligation under the JDLA. Rather, on the face of the document cited by 16 17 Samsung, Netlist is seeking additional 18 benefits to what it had in the JDLA. 19 20 **Evidence:** 21 Dkt. 150-3 [Samsung MSJ Ex. 22 16] (SEC008145) at SEC008170. 23 36. Netlist has been a customer of This alleged fact is a verbatim repeat of 24 Samsung since at least 2001, purchasing Defendant's alleged SUF in support of 25 over \$200 million of products, including its opening Motion for Summary NAND and DRAM components. 26 Judgment, No. 1. 27 28

1		Undisputed but immaterial.
2	Choi Decl. ¶ 2, Exh. 1 at SEC008161; ¶	
3	3, Exh. 2 at 11:21-12:12, 13:10-20,	The fact that Netlist purchased products
4	14:8-15.	from Samsung in prior years does not
5		illuminate whether Netlist had a supply
6		obligation that was breached.
7		
8	37. Both before and after the JDLA and	This alleged fact is a verbatim repeat of
9	to the present, Samsung has been a	Defendant's alleged SUF in support of
10	significant and continuous supplier of	its opening Motion for Summary
11	NAND and DRAM to Netlist, as	Judgment, No. 2.
12	reflected in Netlist's annual reports.	
13		Disputed and immaterial. It is
14	Choi Decl. ¶ 4, Exh. 3 at p.6; ¶ 5, Exh.	immaterial because the fact that
15	4 at p.8; ¶ 6, Exh. 5 at 294:4-18; ¶ 7,	Samsung and Netlist had an at-will
16	Exh. 6 at F-36; ¶ 3, Exh. 2 at 185:10-	sales relationship prior to the JDLA is
17	186:1, 187:21-188:5.	immaterial to whether Samsung had a
18	100.1, 107.21 100.5.	contractual obligation under the JDLA
19		and whether Samsung breached it.
20		
21		Also, the amount of products Netlist
22		purchased from Samsung varied
23		dramatically from year to year.
24		Samsung was <i>not</i> "continuous[ly]" a
25		"significant" supplier of NAND and
26		DRAM to Netlist before the parties
27		entered into the JDLA.
28		

1 2 For example, in the year leading up to 3 the execution of the JDLA, Samsung was a relatively minor supplier for 4 5 Netlist and did not consistently supply 6 products to Netlist. 7 8 Evidence: 9 Ex. 75 to the August 30, 2021 10 LaMagna Declaration ("8-30-21 11 LaMagna Decl. (Samsung invoices from 2015 prior to 12 13 signing of the JDLA, totaling 14 \$23,343.00) 15 Chuck Hong Decl. [Dkt. 145-3], ¶ 8 ("Before the JDLA was 16 17 signed, Samsung supplied effectively no product to Netlist 18 19 and the relationship was ad 20 hoc."). 21 22 To the extent that Samsung's additional 23 SUF No. 37 is read as covering the 24 period during the contract (November 25 2015 through July 2020), Samsung was also not "continuous[ly]" a 26 27 "significant" supplier of NAND and 28

DRAM to Netlist during the breach 1 2 period because they also periodically 3 cut supply, including setting Netlist's allocation at times to zero. See 4 5 Plaintiff's response and evidence to Samsung's additional alleged SUF No. 6 49 as if incorporated herein. 7 8 9 **Evidence:** 10 Dkt. 171-4, Ex. 76 to 8-30-21 LaMagna Decl. (Akemann 11 Report), ¶¶ 123, 127, Exhibit 4 12 13 (Monthly Samsung Orders) 14 Chuck Hong Decl. [Dkt. 145-3], 15 ¶ 10 ("In the quarters after Samsung's zero-allocation 16 decision, Samsung's supply to 17 Netlist of DRAM and NAND 18 19 dropped by more than two thirds. 20 By the third quarter after this 21 decision, the supply from 22 Samsung trickled to virtually 23 nothing.") 24 25 Defendant's cited supporting evidence 26 does not support the alleged fact. 27 28

1		Evidence:
2		• Dkt. 150-2 [Samsung MSJ Ex. 4]
3		at p.8 indicates that among
4		Netlist's suppliers in 2018,
5		Samsung was the <i>smallest</i>
6		supplier.
7		• Dkt. 151-1 [Samsung MSJ Ex. 5]
8		(Gail Sasaki Dep. Tr.) at 294:4-
9		18 states that Samsung
10		comprised "more than 10% of
11		our total purchases in 2013."
12		None of Defendant's exhibits
13		cited covers post-2018 time
14		frame.
15	38. Netlist also purchased NAND and	This alleged fact is a verbatim repeat of
16	DRAM products from SK Hynix and	Defendant's alleged SUF in support of
17	Micron, as well as from sellers who	its opening Motion for Summary
18	purchased the products from the	Judgment, No. 3.
19	manufacturers for resale.	
20		Undisputed but immaterial.
21	Choi Decl. ¶ 4, Exh. 3 at p.6; ¶ 6, Exh. 5	
22	at 194:2-22, 294:4-18; ¶ 3, Exh. 2 at	The fact that Netlist purchased products
23	205:23-206:18, 207:21-208:10.	from other manufacturers when
24		Netlist's customers needed a product
25		specifically manufactured by SK Hynix
26		or Micron, where Samsung's product
27		was not qualified, is immaterial to the
28		NEW YOR DIOLOGO THE TOTAL TO THE TOTAL TO THE TOTAL THE

1 motion. 2 3 Evidence: 4 Chuck Hong Decl. [Dkt. 145-3], 5 ¶¶ 6 ("Therefore, a server or storage manufacturer cannot 6 7 simply replace a Hynix or Micron server memory for a 8 9 Samsung server memory without 10 re-qualification or, in some 11 cases, a redesign of their server 12 systems. Further, NAND and 13 DRAM sourced in secondary 14 channels from a third party are 15 often of inferior quality compared to those components 16 procured directly from the 17 18 manufacturer. It would thus be 19 risky to buy Samsung products 20 from a third party without 21 screening those products ahead 22 of manufacturing and 23 shipment."), 7 ("For these 24 reasons, after the JDLA was 25 signed, Netlist attempted to fill its entire requirement for 26 27 Samsung-qualified NAND and 28

DRAM from Samsung."). 1 2 Dkt. 171-12, Ex. 84 to 8-30-21 3 LaMagna Decl. (Chuck Hong Dep. Tr.) 218:17-220:2. 4 5 39. The amount of NAND and DRAM This alleged fact is a verbatim repeat of product that Samsung can manufacture 6 Defendant's alleged SUF in support of 7 for sale is limited and demand for its its opening Motion for Summary 8 products oftentimes exceeds available Judgment, No. 4. 9 supply. 10 Disputed and immaterial. 11 Choi Decl. ¶ 8, Exh. 7 at 121:24-122:13; 12 There is no allegation of breach based Dkt. 89-21 at ¶ 4. 13 on Netlist's requests for products that 14 exceeded Samsung's manufacturing 15 capacity. Nor is there evidence that 16 Netlist's demand for products "often 17 times" exceeded Samsung's supply. To the extent there was ever a supply 18 19 constraint, Netlist should have been 20 prioritized over other customers to whom Samsung did not have a supply 21 22 obligation. 23 24 Evidence: 25 • Dkt. 148-1 [Samsung MSJ Ex. 26 19] (SEC0000001), § 6 27 Dkt. 171-5, Ex. 77 to 8-30-21 28

1	LaMagna Decl. (Harrison Yoo
2	Dep. Tr.) at 68:11-18 (testifying
3	that the allocation for Netlist was
4	moved to Ma Lab)
5	• Dkt. 171-6, Ex. 78 to 8-30-21
6	LaMagna Decl. (SEC0003842)
7	("We should make a decision for
8	Netlist support, then we can
9	utilize Netlist SSD PA for Ma
10	Lab support.")
11	• Dkt. 142-8 [Netlist MSJ Ex. 21]
12	(SEC116009) ("As of now, we
13	pulled all PAs for Netlist and
14	distributed them to other
15	customers such as Ma Lab.")
16	• Dkt.170-2, Ex. 79 to 8-30-21
17	LaMagna Decl. (SEC060292)
18	("We don't have Q3 PA to
19	support Netlist. All of PA is
20	assigned for Corsair and Ma
21	Labs support.").
22	
23	While Samsung was scaling back
24	allocation for Netlist, it was increasing
25	allocation for its other customers.
26	• Dkt. 142-12 [Netlist MSJ Ex. 33]
27	(SEC126794) (Southwest Region
28	

slide deck, titled "JS CHOI Final 1 2 3.pptx," in which Samsung 3 projected that Virtium and Smart Modular's forecasts would 4 5 increase, unlike Netlist's forecasts). 6 7 8 Netlist is one of the few customers that 9 has a supply agreement with Samsung; 10 Samsung does not have a supply 11 agreement with most of its customers. 12 13 Evidence: 14 Samsung's Interrogatory 15 Response No. 22 ("Excluding individual purchase orders, none 16 of the Similarly Situated 17 Customers currently has an 18 19 agreement with Samsung that 20 obligates Samsung to supply any 21 quantity of NAND or DRAM 22 products.") 23 Ex. 77 to LaMagna Decl. 24 (Harrison Yoo Dep. Tr.) at 13:4-25 24 (identifying only Ma Lab as a 26 customer other than Netlist with 27 a supply agreement). 28

40. Due to the nature of the industry, This alleged fact is a verbatim repeat of 1 2 Defendant's alleged SUF in support of Netlist, like other customers, provides 3 Samsung with forecasts of the amount its opening Motion for Summary of product it wishes to purchase, and Judgment, No. 5. 4 5 Samsung lets Netlist know how much 6 product it can allocate to Netlist for Undisputed in part that Netlist 7 purchase. submitted forecasts for the amount of 8 products requested. Disputed in part 9 that Netlist submitted the forecasts "due Choi Decl. ¶ 9, Exh. 8; ¶ 10, Exh. 9; ¶ 3, 10 to the nature of the industry." Netlist Exh. 2 at 35:10-36:13, 37:9-22, 61:25-11 did so because Samsung demanded that 62:5. 12 this be the process. 13 14 **Evidence:** 15 Dkt. 171-9, Ex. 81 to 8-30-21 16 LaMagna Decl. (Lane Kim Dep. 17 Tr.) at 27:21-29:23 (testifying about Samsung's forecast and 18 19 purchase order process). 20 Dkt. 171-10, Ex. 82 to 8-30-21 21 LaMagna Decl. (Raymond Jiang 22 Dep. Tr.) at 32:18-33:9 23 (testifying that in addition to submitting forecasts via email, he 24 25 would also call Samsung to ask 26 about product availability).

27

28

41. Following these discussions This alleged fact is a verbatim repeat of 1 2 regarding allocations and availability, Defendant's alleged SUF in support of 3 its opening Motion for Summary Netlist issued purchase orders for specific amounts of product that Judgment, No. 6. 4 5 Samsung approved beforehand. Disputed. 6 7 Choi Decl. ¶ 12, Exh. 11 at 23:23-24:5; 8 Samsung did not engage in ¶ 3, Exh. 2 at 62:6-14; ¶ 13, Exh. 12 at 9 "discussions regarding allocations and 28:4-25. availability" with Netlist. 10 11 Between November 15, 2015 until Q2 12 13 2017, Samsung agreed to allow Netlist 14 to submit purchase orders for amounts 15 commensurate with Netlist's requests. 16 17 Evidence: 18 Dkt. 171-9, Ex. 81 to 8-30-21 19 LaMagna Decl. at (Lane Kim 20 Dep. Tr.) 27:21-29:23 (testifying 21 about forecast and purchase 22 order process). 23 P.K. Hong Decl. [Dkt. 145-2], ¶¶ 24 3-4. 25 Chuck Hong Decl. [Dkt. 145-3], 26 ¶ 8. 27 28

1		From Q3 2017 onward, Samsung
2		unliterally determined what it would or
3		would not sell to Netlist (there were no
4		"discussions"). See Plaintiff's response
5		and evidence to Samsung's additional
6		alleged SUF No. 49 as if incorporated
7		herein.
8	42. Samsung accepted and fulfilled	This alleged fact is a verbatim repeat of
9	some of the purchase orders, put some	Defendant's alleged SUF in support of
10	on backlog, and rejected others, just as it	its opening Motion for Summary
11	did with other customers.	Judgment, No. 7.
12		
13	Choi Decl. ¶ 12, Exh. 11 at 36:8-11;	Undisputed that Samsung put "some on
14	Choi Decl. ¶ 3, Exh. 2 at 45:2-46:8,	backlog, and rejected others."
15	62:6-14.	Undisputed but immaterial that
16		Samsung "fulfilled some of the
17		purchase orders." Netlist's claims
18		concern the requests and purchase
19		orders that Samsung <i>did not</i> fulfill.
20		
21		Disputed as to the comparison to "other
22		customers." The evidence shows that
23		Samsung treated Netlist worse than
24		other customers, by unilaterally
25		capping and cutting supply. See
26		Plaintiff's response and evidence to
27		Samsung's additional alleged SUF No.
28		

1		49 as if incorporated herein.
2		
3		In addition, with respect to backlogs,
4		Samsung frequently did not carry over
5		backlog for Netlist.
6		
7		Evidence:
8		• Dkt. 142-3 [Netlist MSJ Ex. 15]
9		(SEC005294) (June 2017 email
10		in which Knuth reports that he
11		convinced Netlist to cancel \$2
12		million in backlog).
13		
14		Defendant's cited supporting evidence
15		does not support the fact.
16		
17		Evidence:
18		Defendant cites to the deposition
19		testimony of Netlist witnesses
20		(Steven Yu and P. K. Hong
21		deposition transcripts,
22		respectively). Neither exhibit
23		speaks to what Samsung did with
24		"other customers."
25	43. This business protocol—the use of	This alleged fact is a verbatim repeat of
26	backlogs, forecasts, allocations, and	Defendant's alleged SUF in support of
27	purchases orders—remained the same	its opening Motion for Summary
28		NETH LET BLOGGET A TEMENT OF GENTLES PRODUCES OF

throughout the parties' long standing Judgment, No. 8. 1 2 business relationship and even after the 3 JDLA was executed. As to the parties' dealings outside of the contract period, those dealings are 4 5 irrelevant to Samsung's breach during Choi Decl. ¶ 3, Exh. 2 at 47:24-50:6, 6 the contract period. 62:6-14; ¶ 14, Exh. 13 at NL004680. 7 8 Disputed as to the "business protocol," 9 which, per Plaintiff's responses to 10 Samsung's additional alleged SUF Nos. 11 40-42 incorporated herein, is disputed 12 between the parties. 13 14 In particular, during the contract period, 15 the use of backlogs, forecasts, allocations, and purchases orders did 16 17 not "remain the same." See Plaintiff's response and evidence to Samsung's 18 additional alleged SUF Nos. 40-42 as if 19 20 incorporated herein. 21 22 During the term of the JDLA, in Q2 23 2017, notwithstanding any historical 24 business protocol, Samsung began to 25 refuse to supply any products to Netlist, 26 regardless of protocol, and/or capped 27 the amount of products that could be 28

1		purchased. See Plaintiff's response and
2		evidence to Samsung's additional
3		alleged SUF No. 49 as if incorporated
4		herein.
5		
6		Defendant's cited supporting evidence
7		does not support the proposition that
8		the "business protocol remained
9		the same throughout the parties'
10		longstanding business relationship."
11	44. After the JDLA, Samsung continued	This alleged fact is a verbatim repeat of
12	to supply Netlist with NAND and	Defendant's alleged SUF in support of
13	DRAM outside of the joint development	its opening Motion for Summary
14	context.	Judgment, No. 52.
15		
16	Choi Decl. ¶ 3, Exh. 2 at 47:24-50:6,	To the extent this is construed to mean
17	54:24-55:10, 183:3-15, 184:8-20.	after the JDLA (i.e., after termination
18		July 15, 2020), it is undisputed that
19		Samsung continued to supply Netlist
20		with <i>some</i> NAND and DRAM
21		products. But this is immaterial
22		because conduct after the JDLA is not
23		relevant to whether was a breach of the
24		JDLA prior to termination.
25		
26		To the extent Defendant is referring to
27		the period after the <i>execution</i> of the
28		NETH LOT DIVING OTHER DIVING OF STREET

1		JDLA, disputed to the extent it is
2		construed as meaning in compliance
3		with Section 6.2 of the JDLA.
4		
5		In Q2 2017, Samsung began to refuse
6		to supply any products to Netlist,
7		and/or capped the amount of products
8		that could be purchased. See Plaintiff's
9		response and evidence to Samsung's
10		additional alleged SUF Nos. 37 and 45
11		as if incorporated herein.
12	45. Samsung's sales to Netlist have	This alleged fact is a verbatim repeat of
13	continued from 2001 to the present day,	Defendant's alleged SUF in support of
14	according to the same course of dealing	its opening Motion for Summary
15	that existed before the JDLA, after the	Judgment, No. 53.
16	JDLA, and continue to this day after	
17	Netlist purported to terminate the JDLA	Disputed and immaterial.
18	and filed this lawsuit.	
19		The fact that Samsung and Netlist
20	Choi Decl. ¶ 21, Exh. 11 at 25:6-25,	conducted at-will sales transactions
21	201:9-18; ¶ 3, Exh. 2 at 27:21-28:12,	prior to or after the JDLA is immaterial
22	35:23-36:13, 37:18-22, 47:24-50:4,	to whether Samsung had a contractual
23	183:3-15, 184:8-20.	obligation under the JDLA and whether
24		Samsung breached it.
25		
26		Disputed as to the representation that
27		the "same course of dealing" existed or
28		

"continued" from 2001 to the present-1 2 it did not. For example, in 2015 prior 3 to the signing of the JDLA, Samsung sold close to no products to Netlist. 4 5 Evidence: 6 7 Dkt. 171-3, Ex. 75 to 8-30-21 LaMagna Decl. (excerpt of 8 NL117869) (Samsung invoices 9 10 from 2015 prior to signing of the 11 JDLA, totaling \$23,343.00) 12 Chuck Hong Decl. [Dkt. 145-3], 13 ¶ 8 ("Before the JDLA was 14 signed, Samsung supplied 15 effectively no product to Netlist 16 and the relationship was ad hoc."). 17 18 19 In 2016, Samsung largely supplied 20 Netlist with NAND and DRAM 21 products that Netlist requested. 22 23 Evidence: 24 P.K. Hong Decl. [Dkt. 145-2], ¶¶ 25 3-4. 26 Chuck Hong Decl. [Dkt. 145-3], 27 ¶ 8. 28

1 2 But starting in Q2 2017 and until the 3 termination of the JDLA, Samsung frequently and repeatedly rejected 4 5 purchase orders and/or refused to supply products, including by imposing 6 a "zero allocation" on Netlist, in 7 derogation of the supply obligation. 8 9 10 Evidence: 11 Dkt. 142-5 [Netlist MSJ Ex. 18] (SEC058105) (May 2017 email 12 13 from Steven Metz stating that he informed Netlist that "Samsung 14 15 had zero allocation in Q3 to support Netlist" or Netlist's 16 17 customers) 18 Dkt. 171-15, Ex. 87 to 8-30-21 LaMagna Decl. (NL063129) 19 (April 2017 email from 20 21 Raymond Jiang to Neal Knuth, in 22 which Samsung refused to 23 supply Netlist with SM863a and 24 PM863a products not because 25 they weren't available, but 26 because Samsung decided to 27 provide them to Ma Labs instead. 28

1	Jiang emails Knuth, "with lack of
2	support from Samsung, we may
3	end up losing these OEM
4	customers.")
5	• Dkt. 171-16, Ex. 88 to 8-30-21
6	LaMagna Decl. (SEC143892) (In
7	September 2017, Lane Kim
8	instructs Neal Knuth to not ship
9	out \$250k of products that Netlist
10	requested in September 2017,
11	even though the products were
12	on hand in the warehouse ready
13	for shipment because of the \$1
14	million allocation cap)
15	• Chuck Hong Decl. [Dkt. 145-3],
16	¶ 8.
17	• Dkt. 145-18 [Netlist MSJ Ex. 14]
18	(NL119258) (PK Hong circulates
19	notes from meeting with
20	Samsung in February 2016: "HS
21	mentioned that up to a year ago
22	– he was told not to support
23	Netlist. He actually was not
24	allowed to visit Netlist. GAM
25	conflict. This comes from our
26	VLP business at IBM. He
27	mentioned that he is now being
28	

1	told to support Netlist and will")
2	• Dkt. 142-5 [Netlist MSJ Ex. 18]
3	(SEC058105) (in May 2017,
4	Knuth conveyed to Netlist that
5	Samsung had no support for Q3
6	2017; Metz also communicated
7	to Paik Ki Hong that "Samsung
8	had zero allocation in Q3 to
9	support Netlist and/or the end
10	customers Netlist is currently
11	supporting")
12	• Dkt. 145-38 [Netlist MSJ Ex. 34]
13	(NL020770) (January 2018 email
14	from Paik Ki Hong to Steven
15	Metz, "I was just told that
16	Samsung North America had
17	decided to give Netlis <i>t \$0</i>
18	allocation and no support. This
19	is a problem We have a
20	JDLA that states Samsung will
21	support Netlist. We have on
22	paper that Samsung will support
23	Netlist with components for
24	NVDIMM.")
25	• Dkt. 170-3, Ex. 89 to 8-30-21
26	LaMagna Decl. (SEC000379) at
27	SEC000383 (February 2018
28	

1	"Southwest Region Weekly
2	Report" noting, "Netlist backlog
3	is being addressed and sales will
4	be little/no moving forward.");
5	SEC000387 ("Netlist: Account
6	will be closed in 2018").
7	• Dkt. 145-39 [Netlist MSJ Ex. 35]
8	(NL020775) (In February 2018,
9	Paik Ki Hong emailed Neal
10	Knuth, "In Jan. '18, Samsung
11	stopped shipments all together.
12	These drastic changes have
13	impacted our business and
14	impacted our ability to support
15	our customers. We need
16	Samsung to support the forecast
17	we have included in this email."
18	• Dkt. 171-18, Ex. 90 to 8-30-21
19	LaMagna Decl. (Knuth Dep. Tr.)
20	at 165:19-24 (testifying that in
21	February 2018, Samsung had
22	imposed a zero allocation for
23	Netlist).
24	
25	See also Plaintiff's response and
26	evidence to Samsung's additional
27	alleged SUF No. 37 incorporated
28	

1		herein.
	AC N-41'-4 14 - 1-41 -4 41 - IDI A 1'-1	
2	46. Netlist understood that the JDLA did	This alleged fact is a verbatim repeat of
3	not guarantee it access to all of the	Defendant's alleged SUF in support of
4	Samsung product it requested, but only	its opening Motion for Summary
5	the product that Samsung actually	Judgment, No. 54.
6	agreed to sell.	
7		Disputed.
8	Choi Decl. ¶ 3, Exh. 2 at 47:24-50:6,	
9		Pursuant to the JDLA, Netlist expected
10	54:24-55:10, 91:10-93:24, 94:6-21,	that Samsung would be obligated under
11	183:3-15, 184:8-20; ¶ 53, Exh. 52 at	the supply provision to "supply NAND
12	NL002024-2027; ¶ 54, Exh. 53; ¶ 46,	and DRAM products to Netlist on
13	Exh. 45; ¶ 49, Exh. 48.	Netlist's request at a competitive
14		price," not "only the product that
15		Samsung actually agreed to sell."
16		
17		Evidence:
18		• Dkt. 148-1 [Samsung MSJ Ex.
19		19] (SEC0000001) at § 6.2.
20		
21		Contrary to Defendant's representation
22		of Mr. Paik Ki Hong's deposition
23		testimony, Mr. Hong in fact testified
24		that Samsung did not fulfill Netlist's
25		requests for products.
26		• Dkt. 171-11, Ex. 83 to 8-30-21
27		LaMagna Decl. (Paik Ki Hong
28		

1	Dep. Tr.) at 261:23-262:22.
2	• Paik Ki Hong Decl. [Dkt. 145-2],
3	¶ 3 ("Samsung agreed to supply
4	NAND and DRAM to Netlist at
5	Netlist's request and at a
6	competitive price.").
7	• See also Dkt. 145-38 [Netlist
8	MSJ Ex. 34] (NL020770)
9	(January 2018 email from P.K.
10	Hong to Steven Metz, "I was just
11	told that Samsung North
12	America had decided to give
13	Netlist \$0 allocation and no
14	support. This is a problem
15	We have a JDLA that states
16	Samsung will support Netlist.
17	We have on paper that Samsung
18	will support Netlist with
19	components for NVDIMM.")
20	
21	Likewise, Netlist's other employees
22	held the same belief.
23	• Chuck Hong Decl. [Dkt. 145-3],
24	¶ 5 (the "supply obligation was
25	firm and binding. Netlist and
26	Samsung executed a Joint
27	Development and License
28	

1		Agreement ("JDLA") in
2		November 2015.")
3		• Dkt. 171-10, Ex. 82 to 8-30-21
4		LaMagna Decl. (Raymond Jiang
5		Dep. Tr.) at 206:6-19.
6		
7		Netlist's reasonable accommodations to
8		Samsung do not prove that Netlist
9		believed that Samsung was only
10		required to sell what it wanted to.
11		
12		Evidence:
13		• Choi Decl. ¶ 53, Exh. 52 at
14		NL002024-2027; ¶ 54, Exh. 53 at
15		pp. 1, 2; ¶ 46, Exh. 45; ¶ 49, Exh.
16		48.
17		• Dkt. 151-1 [Samsung MSJ Ex. 2]
18		(Paik Ki Hong Dep. Tr.) at
19		93:22-24 (testifying that Netlist
20		"would submit POs for whatever
21		Samsung told us they could
22		support, but it's still a fraction of
23		our request. To get parts, you
24		have to issue a PO.")
25	47. Due to Samsung needing lead time	This alleged fact is a verbatim repeat of
26	for production, Netlist submitted	Defendant's alleged SUF in support of
27	forecasts of its requests, and discussed	its opening Motion for Summary
28		

with Samsung how much material Judgment, No. 55. 1 would be allocated and made available 2 3 to it. Disputed and immaterial. 4 5 Netlist did not submit forecasts due to Choi Decl. ¶ 3, Exh. 2 at 48:10-12.; ¶ 6 Samsung needing lead time. Netlist 13, Exh. 12 at 152:5-153:24. 7 submitted forecasts because that is what 8 Samsung required Netlist to do. Even 9 when Samsung had products in stock, 10 they chose not to ship products to 11 Netlist because of its product allocation 12 cap and/or zero allocation. 13 14 **Evidence:** 15 Dkt. 171-16, Ex. 88 to 8-30-21 16 LaMagna Decl. (SEC143892) (In September 2017, Lane Kim 17 instructs Neal Knuth to not ship 18 out \$250k of products that Netlist 19 20 requested in September 2017, 21 even though the products were 22 on hand in the warehouse ready 23 for shipment because of the \$1 million allocation cap). 24 25 26 Defendant's cited supporting evidence 27 does not support the fact. Defendant 28

cites to the deposition transcripts of 1 2 Netlist's Chuck Hong and Raymond 3 Jiang. Neither witness testified as to Samsung's production schedule or 4 5 knowledge regarding Samsung's need for lead time. 6 7 8 Also disputed that the parties "discussed with Samsung how much 9 10 material would be allocated and made 11 available to it." After Q2 2017, 12 Samsung unilaterally decided what 13 product it would sell to Netlist or not. There was no "discussion." See 14 15 Plaintiff's response and evidence to Samsung's additional alleged SUF No. 16 45 incorporated herein. 17 18 19 Regardless, it is immaterial because 20 whether we submit forecasts or not, 21 Samsung still refused to sell Netlist the 22 requested product and/or did not fulfill 23 orders placed by Netlist. See Plaintiff's 24 response and evidence to Samsung's 25 additional alleged SUF Nos. 43 and 45 26 as if incorporated herein. 27

28

48. Netlist only submitted purchase This alleged fact is a verbatim repeat of 1 2 orders for specific quantities of product Defendant's alleged SUF in support of 3 after Samsung indicated that such its opening Motion for Summary product would be available. 4 Judgment, No. 56. 5 Disputed. 6 Choi Decl. ¶ 12, Exh. 11 at 23:23-24:5; 7 ¶ 3, Exh. 2 at 62:6-14, 93:18-24; ¶ 13, Defendant's cited supporting evidence 8 Exh. 12 at 154:3-20. 9 does not support the fact. Defendant 10 refused orders even when it had 11 products available but were expected to 12 be forthcoming. From time to time, 13 Samsung also took orders for products 14 that were not immediately available and 15 placed Netlist's orders on backlogs. 16 17 Evidence: 18 Dkt. 171-15, Ex. 87 to 8-30-21 19 LaMagna Decl. (NL063129) 20 (April 2017 email from Raymond Jiang to Neal Knuth, in 21 22 which Samsung refused to 23 supply Netlist with SM863a and 24 PM863a products not because 25 they weren't available, but 26 because Samsung decided to 27 provide them to Ma Labs instead.

28

1		Jiang emails Knuth, "with lack of
2		support from Samsung, we may
3		end up losing these OEM
4		customers.")
5		• Dkt. 171-16, Ex. 88 to 8-30-21
6		LaMagna Decl. (SEC143892)
7		(In September 2017, Lane Kim
8		instructs Neal Knuth to not ship
9		out \$250k of products that Netlist
10		requested in September 2017,
11		even though the products were
12		on hand in the warehouse ready
13		for shipment because of the \$1
14		million allocation cap).
15		
16		Evidence:
17		• Paik Ki Hong Depo Tr. 62:8-9 ("in
18		most cases, we would issue POs on
19		what Samsung could support.")
20		(emphasis added).
21	49. Netlist purchased a substantial	This alleged fact is a verbatim repeat of
22	amount of NAND and DRAM from	Defendant's alleged SUF in support of
23	Samsung in each quarter from	its opening Motion for Summary
24	November 2015 to the present, although	Judgment, No. 58.
25	the amounts varied over time.	
26		Undisputed that Samsung sold to
27		Netlist some amount of product in
28		NETT LOT INCIG OT A TEN LEVE OF OFFICE AND IN PAGE ATTEN

Choi Decl. ¶ 51, Exh. 50 at F-36, F-34, every quarter from November 2015 to 1 2 F-36, F-36, F-36, 77; ¶ 52, Exh. 51; ¶ 3, the present, but immaterial because 3 Exh. 2 at 186:16-188:5; ¶ 7, Exh. 6 at Netlist's claim is that not that Samsung failed to supply any product—Netlist's 4 p.8. 5 claim is that Samsung did not supply 6 Netlist the amount of products 7 requested. 8 9 Disputed as to the characterization of "a 10 substantial amount." Starting in Q2 11 2017, Samsung at times allocated 12 Netlist anywhere from zero to no more 13 than a \$1 million per month, which was 14 insubstantial to meet Netlist's product 15 needs. 16 17 **Evidence:** 18 Dkt. 171-4, Ex. 76 to 8-30-21 19 LaMagna Decl. (Akemann 20 Opening Report), ¶ 123 ("from 21 Q2 2017 through July 15, 2020, 22 Netlist only received 48% of 23 units ordered and 67% of dollar 24 volume ordered. And in the 25 period leading up to this lawsuit 26 and Netlist's notice to cure and 27 termination (i.e., from April 1, 28

1	2020 through July 15, 2020),
2	Netlist only received 7% of units
3	ordered and 51% of dollar
4	volume ordered")
5	• Dkt. 171-6, Ex. 76 to 8-30-21
6	LaMagna Decl. (Akemann
7	Report), Exhibit 4 (Monthly
8	Samsung Orders)
9	• Dkt. 171-18, Ex. 90 to 8-30-21
10	LaMagna Decl. (Knuth Dep. Tr.)
11	at 165:19-24 (testifying that in
12	February 2018, Samsung had
13	imposed a zero allocation for
14	Netlist).
15	• Dkt. 142-15 [Netlist MSJ Ex. 18]
16	(SEC058105) (in May 2017,
17	Knuth conveyed to Netlist that
18	Samsung had no support for Q3
19	2017; Metz also communicated
20	to Paik Ki Hong that "Samsung
21	had zero allocation in Q3 to
22	support Netlist and/or the end
23	customers Netlist is currently
24	supporting"; Metz also writes,
25	"Heads up. Since Samsung is
26	nearly 100% of their support, and
27	Revenue this will have a

1	dramatic impact on their
2	financials and future business.")
3	• Dkt. 145-38 [Netlist MSJ Ex. 34]
4	(NL020770) (January 2018 email
5	from Paik Ki Hong to Steven
6	Metz, "I was just told that
7	Samsung North America had
8	decided to give Netlist \$0
9	allocation and no support. This
10	is a problem We have a
11	JDLA that states Samsung will
12	support Netlist. We have on
13	paper that Samsung will support
14	Netlist with components for
15	NVDIMM.")
16	• Dkt. 179-3, Ex. 89 to 8-30-21
17	LaMagna Decl. (SEC000379) at
18	SEC000383 (February 2018
19	"Southwest Region Weekly
20	Report" noting, "Netlist backlog
21	is being addressed and sales will
22	be little/no moving forward.");
23	SEC000387 ("Netlist: Account
24	will be closed in 2018").
25	• Dkt. 145-39 [Netlist MSJ Ex. 35]
26	(NL020775) (In February 2018,
27	Paik Ki Hong emailed Neal
28	

1		Knuth, "In Jan. '18, Samsung
2		stopped shipments all together.
3		These drastic changes have
4		impacted our business and
5		impacted our ability to support
6		our customers. We need
7		Samsung to support the forecast
8		we have included in this email.")
9		• Dkt. 152-2 [Samsung MSJ Ex.
10		58] (NL000078).
11		See Plaintiff's response and evidence to
12		Samsung's additional alleged SUF No.
13		45 as if incorporated herein.
14	50. According to their own terms,	This alleged fact is a verbatim repeat of
15	Netlist's purchase orders superseded	Defendant's alleged SUF in support of
16	any prior agreements or discussions	its opening Motion for Summary
17	with Samsung, such as forecasts and	Judgment, No. 58.
18	informal e-mail or oral requests to	
19	purchase product.	Disputed.
20		
21	Choi Decl. ¶ 55, Exh. 54 at pp.3, 6, 9, §	Netlist's purchase orders do not
22	28; ¶ 53, Exh. 52 at NL002029.	"supersede any prior agreements or
23	20, 33, E/M. 32 at 1 (2002)2.	discussions with Samsung." There is
24		nothing in the purchase orders that
25		requires superseding the JDLA or
26		absolves Samsung of its obligation to
27		fulfill Netlist's requests for products.
28		

1		Section 28 of the cited purchase order
2		(in Samsung MSJ Ex. 54) states the
3		agreement sets forth the entire
4		agreement for the subject matter hereof.
5		The subject matter of the purchase
6		orders is the specific quantity, price,
7		and delivery terms for the products
8		listed in the purchase order. Those
9		terms supplied by the purchase order
10		are not in the JDLA, and therefore there
11		is no tension between the two. The
12		purchase order does not cover the
13		requests for product that Samsung
14		refuses that are then not memorialized
15		in the purchase order to begin with.
16		
17		Evidence:
18		• Choi Decl. ¶ 55, Exh. 54 at pp. 3,
19		6, 9, § 28; ¶ 53, Exh. 52 at
20		NL002029.
21	51. In 2017, Netlist asked Samsung for	This alleged fact is a verbatim repeat of
22	Embedded MultiMediaCard (eMMC)	Defendant's alleged SUF in support of
23	supply.	its opening Motion for Summary
24		Judgment, No. 61.
25	Choi Dool ¶ 2 Evh 2 at 105:10 12	
26	Choi Decl. ¶ 3, Exh. 2 at 195:10-12.	Undisputed.
27		

1	52. Samsung does not normally sell	This alleged fact is a verbatim repeat of
2	eMMC to channel distributors like	Defendant's alleged SUF in support of
3	Netlist, but, after CEO Chuck Hong	its opening Motion for Summary
4	asked President Jun for support,	Judgment, No. 62.
5	Samsung agreed to support Netlist's	
6	requests.	Disputed and immaterial.
7		Whether Samsung "normally" sells
8	Choi Decl. ¶ 11, Exh. 10 at 63:17-64:16,	EMMC to channel distributors is
9	85:17-87:2.	irrelevant, because Netlist has a supply
10		agreement with Samsung that others do
11		not have.
12		
13		Evidence:
14		• Dkt. 148-1 [Samsung MSJ Ex.
15		19] (SEC0000001), § 6.2.
16		
17		Defendant's cited supporting evidence
18		also does not support the fact.
19		
20		Evidence:
21		• Dkt. 150-2 [Samsung MSJ Ex.
22		10] (Harrison Yoo Dep. Tr.) just
23		states that it is "difficult to locate
24		those products," not that
25		Samsung "does not normally
26		sell" eMMC.
27		

1	53. Samsung allocated a significant	This alleged fact is a verbatim repeat of
2	amount of EMMC product to Netlist for	Defendant's alleged SUF in support of
3	2017, much of which been allocated to	its opening Motion for Summary
4	another customer.	Judgment, No. 63.
5		
6	Choi Decl. ¶ 11, Exh. 10 at 85:17-87:2.	Undisputed that Samsung offered to
7	Choi Deci. 11, Exii. 10 at 63.17-67.2.	sell eMMC products to Netlist in 2017.
8		
9		Disputed in part as to the
10		characterization of "significant
11		amount."
12		
13		Defendant's cited supporting evidence
14		does not support the fact. The deponent
15		cited by Defendant (Samsung MSJ Ex.
16		10) does not say that it was a
17		"significant" amount nor does he say
18		that "much of" the products were
19		previously allocated to another
20		customer.
21	54. After purchases orders had been	This alleged fact is a verbatim repeat of
22	submitted and prices for eMMC	Defendant's alleged SUF in support of
23	dropped unexpectedly in the second half	its opening Motion for Summary
24	of 2017, Netlist cancelled half of its	Judgment, No. 64.
25	eMMC order. Netlist CEO Chuck Hong	
26	testified that cancelling a purchase order	Undisputed that Netlist cancelled part
27		of the eMMC order but immaterial
28	L	NEW YOR BY CO. OT A TRU (TIVE OF OF DAY IN TO THE OF OF THE OTHER OF OF THE OTHER OT

constitutes non-performance under the because Netlist's cancellation was not a 1 JDLA. 2 violation of the JDLA (or of the related 3 purchase order). 4 Choi Decl. ¶ 3, Exh. 2 at 194:8-196:10; 5 Netlist cancelled part of the eMMC ¶ 59, Exh. 58 at NL000091; ¶ 11, Exh. 6 order only after Samsung refused to 10 at 85:17-87:2; ¶ 8, Exh. 7 at 164:11-7 timely provide product to Netlist at a 21. 8 competitive price as required by 9 Section 6.2. 10 11 Evidence: 12 Dkt. 152-2 [Samsung MSJ Ex. 13 58] (NL000078) at NL000091. 14 Dkt. 148-1 [Samsung MSJ Ex. 19] (SEC0000001), § 6.2. 15 16 17 Disputed that Chuck Hong testified that Netlist's cancellation of a purchase 18 order constitutes non-performance 19 20 under the JDLA. 21 22 Chuck Hong testified that Samsung's 23 cancellation of purchase orders violates the Section 6.2 of the JDLA—Mr. 24 25 Hong never testified that it was a 26 violation of the JDLA for Netlist to 27 cancel orders, much less to do so after

Samsung had breached its obligations, 1 2 e.g., by failing to provide a competitive 3 price or by failing to deliver ordered 4 products. 5 6 Evidence: 7 Dkt. 157-4 [Samsung MSJ Ex. 7] 8 (Chuck Hong Dep. Tr.) at 9 164:11-21. 10 55. Netlist argued in its Korean tax This alleged fact is a verbatim repeat of 11 appeal that: "the granting of cross Defendant's alleged SUF in support of 12 licenses under the [JDLA] is limited to its opening Motion for Summary 13 the joint research and development, and Judgment, No. 65. 14 hence in cases where Samsung 15 Electronics uses intellectual property Netlist does not dispute that the quoted 16 rights of [Netlist] in the course of its language appears in documents. own research and development, it does 17 Disputed to the extent that Samsung not constitute something that can be 18 characterizes this quote as suggesting that the patent license overall was 19 subject to the [JDLA]." 20 limited to the parties' "joint research 21 and development." Choi Decl. ¶ 60, Exh. 59 at p.4. 22 23 The document quoted is a submission 24 to Korean tax authorities describing the 25 applicability of the patent license to 26 conduct with a territorial nexus to the 27 Republic of Korea. Netlist has no

1		Korean patents, and therefore no patent
2		coverage as described in the quote.
3		
4		Evidence:
5		• Dkt. 171-22, Ex. 94 to 8-30-21
6		LaMagna Decl. (Kam Report), ¶¶
7		32-40.
8		
9		Disputed as to the materiality of the
10		statement and immaterial. Neither of
11		Samsung's breaches are related to the
12		scope of the licenses granted under the
13		JDLA.
14		
15		Evidence:
15 16		Evidence: • Complaint, Dkt 13, at 4.
	56. The Korean tax tribunal relied on	
16	56. The Korean tax tribunal relied on Netlist's position that the license was	• Complaint, Dkt 13, at 4.
16 17		• Complaint, Dkt 13, at 4. This alleged fact is a verbatim repeat of
16 17 18	Netlist's position that the license was	• Complaint, Dkt 13, at 4. This alleged fact is a verbatim repeat of Defendant's alleged SUF in support of
16 17 18 19	Netlist's position that the license was limited in making its ruling.	• Complaint, Dkt 13, at 4. This alleged fact is a verbatim repeat of Defendant's alleged SUF in support of its opening Motion for Summary
16 17 18 19 20	Netlist's position that the license was	• Complaint, Dkt 13, at 4. This alleged fact is a verbatim repeat of Defendant's alleged SUF in support of its opening Motion for Summary
16 17 18 19 20 21	Netlist's position that the license was limited in making its ruling.	• Complaint, Dkt 13, at 4. This alleged fact is a verbatim repeat of Defendant's alleged SUF in support of its opening Motion for Summary Judgment, No. 66.
16 17 18 19 20 21 22	Netlist's position that the license was limited in making its ruling.	• Complaint, Dkt 13, at 4. This alleged fact is a verbatim repeat of Defendant's alleged SUF in support of its opening Motion for Summary Judgment, No. 66.
16 17 18 19 20 21 22 23	Netlist's position that the license was limited in making its ruling.	• Complaint, Dkt 13, at 4. This alleged fact is a verbatim repeat of Defendant's alleged SUF in support of its opening Motion for Summary Judgment, No. 66. Disputed.
16 17 18 19 20 21 22 23 24	Netlist's position that the license was limited in making its ruling.	• Complaint, Dkt 13, at 4. This alleged fact is a verbatim repeat of Defendant's alleged SUF in support of its opening Motion for Summary Judgment, No. 66. Disputed. Defendant's cited supporting evidence
16 17 18 19 20 21 22 23 24 25	Netlist's position that the license was limited in making its ruling.	 Complaint, Dkt 13, at 4. This alleged fact is a verbatim repeat of Defendant's alleged SUF in support of its opening Motion for Summary Judgment, No. 66. Disputed. Defendant's cited supporting evidence does not state the characterization

does not show that the Korean tax 1 2 tribunal relied on Netlist's position, but 3 is rather a recitation of each party's 4 positions. 5 Evidence: 6 7 Dkt. 88-7 at p. 7. 8 9 Defendant's cited supporting evidence 10 does not support the fact. Defendant 11 fails to identify any relevant evidentiary 12 citation for their claim that "the Korean 13 tax tribunal relied on Netlist's position 14 that the license was limited in making its ruling." 15 This alleged fact is a verbatim repeat of 16 57. Section 3.2 of the JDLA states, in 17 Defendant's alleged SUF in support of pertinent part: its opening Motion for Summary 18 "Taxes. . . . To the extent that any 19 Judgment, No. 68. withholding taxes are required by 20 applicable law for the payment set forth 21 Disputed as to the characterization of in this Agreement, Samsung may deduct 22 the quoted language as "pertinent." any applicable withholding taxes due or 23 Undisputed as to the quoted portion of payable under the laws of Korea . . . 24 the language from Section 3.2 of the provided that Samsung shall pay such 25 JDLA. withholding taxes to the Korean tax 26 authorities and promptly provide Netlist 27 28

with a certificate of payment for such	
withholding tax, as required by	
applicable law or treaty, and reasonably	
cooperate with Netlist in any lawful	
efforts to claim a credit or refund or	
exemption with respect to any such	
withholding taxes.	
Chai Daal #20 Eal 10 at a 5 8 2 2	
Choi Decl. ¶ 20, Exh. 19 at p.5, § 3.2.	
58. On November 5, 2015, shortly	This alleged fact is a verbatim repeat of
before the JDLA was signed, Samsung	Defendant's alleged SUF in support of
sent Netlist a tax form for Netlist to	its opening Motion for Summary
apply for a reduced tax rate as a foreign	Judgment, No. 69.
corporation.	
	Disputed that Samsung sent Netlist a
Choi Decl. ¶ 61, Exh. 60; ¶ 6, Exh. 5 at	tax form on November 5, 2015. The
140:23-141:22, 143:14-24. ¶ 15, Exh.	November 5, 2015 email referenced in
"	the cited document does not attach a tax
14 at RFA No. 17; ¶ 61, Exh. 60 at	form.
NL046086-89.	
	Disputed as to the characterization that
	the tax form was "for Netlist to apply
	for a reduced tax rate." Samsung sent
	this form to Netlist on October 29,
	2015 (not November 5, 2015), among
	other documents including a vendor
	The second of th

1		registration form, stating that the tax
2		form was among the "necessary
3		documents to remit NRE expenses."
4		This is not factually accurate. The
5		NRE Fees were not subject to taxes in
6		Korea, so Netlist never had a reason to
7		apply for a reduced tax rate.
8		
9		Evidence:
10		• Dkt. 171-21, Ex. 93 to 8-30-21
11		LaMagna Decl. (NL044878), at
12		1.
13		• Dkt. 171-22, Ex. 94 to 8-30-21
14		LaMagna Decl. (Kam Report), at
15		¶¶ 22, 32-40.
16	59. The form indicated that the tax rate	This alleged fact is a verbatim repeat of
17	on royalties pursuant to a treaty with the	Defendant's alleged SUF in support of
18	US was 16.5%.	its opening Motion for Summary
19		Judgment, No. 70.
20	Choi Decl. ¶ 61, Exh. 60 at p. 3; ¶ 15,	
21	Exh. 14 at RFA No. 17; ¶ 61, Exh. 60	Disputed. The form Samsung sent to
22	at NL046086-89.	Netlist does not indicate any tax rate or
23	W 112010000 031	the type of income. It was Samsung
24		that instructed Netlist to fill in certain
25		information in the form, which
26		Samsung claimed was one of the
27		"necessary documents to remit NRE
28		

expenses." 1 2 3 Evidence: 4 • Dkt. 150-5 [Samsung MSJ Ex. 5 60] (NL046086) at NL046088. Dkt. 171-21, Ex. 93 to 8-30-21 6 7 LaMagna Decl. (NL044878), at 8 1. 9 10 Regardless, the alleged fact is 11 immaterial because filling in and signing the tax form does not transform 12 13 untaxable income into taxable income, 14 nor does filling in a particular 15 percentage constitute a declaration or a 16 determination that all or any of the 17 payment are taxable at that rate. Not all 18 royalties for patents are taxable in 19 Korea at a rate of 16.5%, as foreign patents not registered in Korea are not 20 21 taxable in Korea. 22 23 Evidence: 24 Dkt. 171-22, Ex. 94 to 8-30-21 25 LaMagna Decl. (Kam Report), ¶¶ 26 22, 32-40. 27

1	60. Netlist CFO Gail Sasaki reviewed,	This alleged fact is a verbatim repeat of
2	signed, and returned the form to	Defendant's alleged SUF in support of
3	Samsung.	its opening Motion for Summary
4		Judgment, No. 71.
5	Choi Decl. ¶ 61, Exh. 60 at pp.1, 3; ¶ 6,	
6	Exh. 5 at 144:1-145:4.	Undisputed that Ms. Gail Sasaki signed
7	LAII. 3 at 144.1-143.4.	and returned the form to Samsung.
8	61. According to Netlist's CEO Chuck	This alleged fact is a verbatim repeat of
9	Hong, Sasaki had the authority to	Defendant's alleged SUF in support of
10	approve and sign such tax form without	its opening Motion for Summary
11	his approval. In her capacity as Netlist's	Judgment, No. 72.
12	CFO, Sasaki was expected to consult	
13	with a tax expert before executing the	Undisputed that Netlist's CEO stated
14	form to ensure it was appropriate for	that Ms. Sasaki had the authority to
15	Netlist to sign.	approve and sign the tax form.
16		
17	Choi Decl. ¶ 8, Exh. 7 at 175:9-176:14.	Disputed that Ms. Gail Sasaki "was
18		expected to consult with a tax expert."
19		
20		Ms. Sasaki testified that she consulted
21		with tax professionals concerning an
22		earlier version of Choi Exh. 60
23		[Samsung's Ex. 60 in support of its
24		Motion for Summary Judgment], which
25		at that time did not identify any tax
26		statutes or tax rates, after which
27		Samsung asked her to fill in the very
28		

information on which Samsung now 1 2 relies. She complied with Samsung's 3 request because this was just one amongst "several other forms" that 4 5 Samsung asked Netlist to fill out "in the 6 process of setting [Netlist] up as a vendor." Ms. Sasaki "just figured it 7 was something going into a file . . . in 8 [Samsung's] accounting system." She 9 10 was not told, and did not understand, 11 that rather than a submission that would 12 be made to the Korean tax authorities. 13 She trusted Samsung and "took it on 14 face value what [they] said" as to why 15 she was being asked to provide them with a new version of the form. She 16 thought it "was of no importance" to 17 Netlist and "didn't seem to affect 18 [Netlist] one way or the other." 19 20 21 Evidence: 22 Dkt. 171-13, Ex. 85 to 8-30-21 23 LaMagna Decl. (Sasaki Dep. Tr.) 24 at 146:6-20, 147:21-150:13, 25 154:7-24, 155:21-156:8, 157:9-26 17; 27 Dkt. 171-21, Ex. 93 to 8-30-21 28

LaMagna Decl. (NL044878), at 1 2 1; 3 Dkt. 171-22, Ex. 94 to 8-30-21 LaMagna Decl. (Kam Report), ¶ 4 5 22. 62. Samsung withheld 16.5% tax and Undisputed that Samsung withheld 6 7 paid it to the Korean National Tax 16.5% from the NRE fees and paid it to 8 Service because it considered the \$8 the Korean National Tax Service as a million as consideration for Netlist's purported withholding for taxes. 10 grant of patent licenses, and Korean law 11 requires withholding of payments on Disputed that Samsung believed that 12 such royalties. the \$8 million was for patent royalties, 13 or taxable as such, when the JDLA 14 expressly listed the payment under Choi Decl. ¶ 63, Exh. 62 at p.1; ¶ 61, 15 "Development Costs" and expressly Exh. 60 at p. 3; Dkt. 88-7 at p.4. 16 defined it as "non-refundable NRE 17 fees." 18 19 Evidence: 20 Dkt. 148-1 [Samsung MSJ Ex. 21 19] (SEC0000001) at p. 5, §§ 3, 22 3.1. 23 24 Also disputed that Korean law required 25 taxes to be withheld from the NRE fees. 26 The NRE fees were not taxable under 27 Korean law, as the Korean Tax 28

1		Tribunal has already found.
2		
3		Evidence:
4		• Dkt. 171-22, Ex. 94 to 8-30-21
5		LaMagna Decl. (Kam Report), ¶¶
6		32-40.
7		• Dkt. 144-7, PX-192 (NL108731),
8		at 1, 29.
9	63. What Netlist wanted was for	This alleged fact is a verbatim repeat of
10	Samsung to deny that the \$8 million was	Defendant's alleged SUF in support of
11	for patent royalties, which Samsung did	its opening Motion for Summary
12	not believe to be true.	Judgment, No. 77.
13		
14	Choi Decl. ¶ 63, Exh. 62 at p.1; ¶ 61,	Undisputed that Netlist wanted
15	Exh. 60 at p.3; Dkt. 88-7 at p.4; ¶ 67,	Samsung to accurately represent the
16	Exh. 66 at NL118556; ¶ 6, Exh. 5 at	provision of the JDLA, including
17	123:19- 124:24	Section 3.1, which provides "Samsung
18	123.17 124.24	shall pay to Netlist eight million United
19		States dollars (US \$8,000,000) as non-
20		refundable NRE fees."
21		
22		Disputed that Samsung believed that
23		the \$8 million was for patent royalties
24		when the JDLA expressly listed the
25		payment under "Development Costs"
26		and defined it as "non-refundable NRE
27		fees."
28		NETHOT DIGG CT A TEN (TO UT OF OF DIVINE DIGGS TO SE

1 2 Evidence: 3 • Dkt. 148-1 [Samsung MSJ Ex. 19] (SEC0000001) at p. 5, §§ 3, 4 5 3.1. This alleged fact is a verbatim repeat of 6 64. Netlist executives internally 7 discussed whether to provide notice of Defendant's alleged SUF in support of breach over the tax withholding dispute 8 its opening Motion for Summary in March 4, 2016, but decided not to Judgment, No. 84. 10 send a breach notice because it wanted 11 to reap the benefits of its business Immaterial, in that the allegation 12 appears directed to Defendant's prior relationship with Samsung. 13 "election of remedies" defense, on 14 which the Court has already ruled. Choi Decl. ¶ 70, Exh. 69 at p.1; ¶ 6, 15 Exh. 5 at 57:4-64:2. 16 Undisputed that individuals at Netlist 17 discussed whether to provide notice of 18 breach. 19 20 Disputed as to the characterization that 21 Netlist decided "not to send a breach 22 notice because it wanted to reap the 23 benefits of its business relationship 24 with Samsung." 25 26 Gail Sasaki specifically testified that, in 27 part, "the breach comes from lack of

1		cooperation, and [she] was still hopeful
2		that [she] would get cooperation from
3		Samsung," and that she thought
4		Samsung "had not yet breached as [her]
5		recollection was that [Netlist] was still
6		trying to get cooperation." Because of
7		this, the individuals involved in this
8		email chain (who did not have authority
9		to decide this issue) opted not to
10		recommend sending notice at this time.
11		
12		Evidence:
13		• Dkt. 171-13, Ex. 85 to 8-30-21
14		LaMagna Decl. (Sasaki Dep. Tr.)
15		at 67:3-8, 67:17-19.
16	65. As to the supply claim, Netlist	This alleged fact is a verbatim repeat of
17	asserts that "starting as early as the	Defendant's alleged SUF in support of
18	second quarter of 2017, Samsung began	its opening Motion for Summary
19	to refuse and/or cancel orders from	Judgment, No. 85.
20	Netlist.	
21		Undisputed.
22	Choi Decl. ¶ 71, Exh. 70 at p.13, ROG	
23	No. 8.	
24	66. Instead, Netlist waited to provide	This alleged fact is a verbatim repeat of
25	notice of alleged breach until May 27,	This alleged fact is a verbatim repeat of Defendant's alleged SUF in support of
26	nonce of aneged ofeach until May 21,	
27		its opening Motion for Summary
ll ll		

1	2020 man than farmer	Indoment No. 06
1	2020, more than four years after it first	Judgment, No. 86.
2	considered doing so.	
3		Disputed.
4	Dkt. 18-2 at ¶ 19 (First Amended	
5	Complaint); Choi Decl. ¶ 72, Exh. 71.	Netlist as a company did not consider
6		sending a breach notice in 2016. See
7		Plaintiff's response and evidence to
8		Samsung's additional alleged SUF No.
9		64, <i>supra</i> , as if incorporated herein.
10		
11		As to Samsung's wrongful withholding
12		and failure to cooperate in the tax
13		return, Netlist made repeated efforts
14		throughout the time period to engage
15		Samsung in cooperation.
16		
17		Evidence:
18		• Dkt. 171-23, Ex. 95 to 8-30-21
19		LaMagna Decl. (NL005043), at
20		NL005043.
21		• Dkt. 150-5 [Samsung MSJ Ex.
22		62] (NL118609), at NL118609,
23		NL118611-13.
24		
25		As to the breach of the supply
26		provision, Netlist does not allege any
27		material breach in 2016.
28		

1		
2		After Samsung cut off product supply
3		in Q2 2017, Netlist expended
4		significant effort to try to work through
5		the issues with Samsung.
6		
7		Evidence:
8		• Dkt. 171-12, Ex. 84 to 8-30-21
9		LaMagna Decl. (Chuck Hong
10		Dep. Tr.) at 187:15-188:14.
11		• Chuck Hong Decl. [Dkt. 145-3],
12		¶ 10.
13		
14		Ultimately, Samsung's multiple
15		breaches added up to a point where
16		Netlist had to send an official notice of
17		breach, and when Samsung failed to
18		cure, Netlist terminated the contract.
19		See Plaintiff's response and evidence to
20		Samsung's additional alleged SUF No.
21		64, <i>supra</i> , as if incorporated herein.
22	67. In consideration for the JDLA,	Undisputed that a \$15 million loan
23	Samsung provided a \$15 million	made to Netlist by a separate entity
24	convertible note that offered the	(SVIC) is due December 31, 2021.
25	potential that Samsung would take an	
26		Disputed that the \$15 million loan was
27		provided "in consideration for the
28		

equity stake in Netlist. The \$15 million JDLA." The loan was made under a 1 note is due December 31, 2021. 2 separate contract for separate 3 consideration—between Netlist and an entity that is not Defendant Samsung. 4 Choi Decl. ¶ 73, Exh. 72 at NL000342 § 5 4; Choi Decl. ¶ 20, Exh. 19 at p. 1 6 Moreover, Samsung's proffered ("WHEREAS, the Parties are 7 evidence does not indicate that the \$15 concurrently executing an agreement for million loan was in consideration of the 8 convertible note financing") 9 JDLA, and simply notes that there is a 10 separate agreement being executed For note due date, see Choi Decl. ¶ 73, 11 concurrently. Exh. 72 at NL000339 § 2. 12 13 Evidence: 14 Dkt. 148-1 [Samsung MSJ Ex. 19] 15 (SEC0000001) at 1. 16 Dkt. 151-2 [Samsung MSJ Ex. 72] (NL000341, Promissory Note with 17 third-party entity separately defining 18 19 consideration for loan). 20 68. Section 8.1 of the JDLA grants to Undisputed. 21 Netlist and its subsidiaries "a perpetual 22 (subject to Section 13.3), paid-up, (Per Section 8.1 of the JDLA, 23 worldwide, non-exclusive, non-Samsung, not the JDLA, grants the 24 transferable, non-sublicensable license license to Netlist. But for the purposes 25 under Samsung's Licensed Patents to of the present motion, the distinction is make and have made (subject to Section 26 not material). 27 8.4) Netlist's Licensed Products, and to 28

1	use, sell, offer for sale, import, and	
2	otherwise transfer or dispose of such	
3	products."	
4		
5 6 7 8	Choi Decl. ¶ 20, Exh. 19 at p. 8, § 8.1 69. Section 16.7 of the JDLA provides that any amendment "requires the	Undisputed.
9	signatures of the authorized	
10	representatives of the Parties."	
11		
12	Choi Decl. ¶ 20, Exh. 19 at p.14, § 16.7	
13	70. Around the time the JDLA was	This alleged fact is a verbatim repeat of
14	being negotiated, Netlist was having	Defendant's alleged SUF in support of
15	cash flow issues.	its opening Motion for Summary
16		Judgment, No. 12.
17	Choi Decl. ¶ 19, Exh. 18 at F-7.	Disputed and immaterial.
18 19		
20		Defendant's cited supporting evidence
21		does not state the characterization
22		ascribed to it by Defendant. The
23		document speaks for itself.
24	71. Chuck Hong's close friend, YH Jun,	Undisputed that a Samsung executive
25	who had been President of Samsung's	named Young Hyun Jun was a friend of
26	memory division, moved to a separate	Mr. Hong's and left Samsung's
27	company in 2017. Up until that point,	memory division sometime in 2017.
28		

Chuck Hong had been able to use this Undisputed that Dr. Jun directed 1 2 relationship to "push through" certain Samsung's employees to ensure that 3 orders and obtain red-carpet treatment. Samsung was supplying NAND and 4 DRAM products to Netlist as required 5 under the JDLA. Choi Decl. ¶ 8, Exh. 7 at 119:6-120:7. 6 7 Disputed as to the characterization that they were "close" friends or that Netlist 8 9 obtained "red-carpet" treatment. Neither of those terms are supported by 10 11 the text quoted by Defendant, and nor is 12 there any evidence that Netlist received 13 any "treatment" while Dr. Jun was at 14 Samsung's memory division that was 15 beyond that required under Section 6.2 of the JDLA. 16 17 18 Evidence: 19 Dkt. 148-1 [Samsung MSJ Ex. 19] (SEC0000001) at § 6.2. 20 21 22 23 24 25 26 27 28

Dated: September 6, 2021 GIBSON, DUNN & CRUTCHER LLP By: Raymond LaMagna Raymond LaMagna 333 South Grand Avenue Los Angeles, CA 90071 213.229.7101 rlamagna@gibsondunn.com Attorneys for Plaintiff Netlist Inc. NETLIST INC'S STATEMENT OF GENUINE DISPUTES OF